

No. 11623

United States
Circuit Court of Appeals
For the Ninth Circuit.

GEORGE GARTNER, an Insane Person, and
MIKE ERCEG, Guardian of the Estate of
George Gartner, an Insane Person,
Appellants,
vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Territory of Alaska, 'Fourth Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court for the Territory of Alaska

Fourth Judicial Division

No. 5368

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE GARTNER, an Insane Person, and
MIKE ERCEG, Guardian of the Estate of
George Gartner, an Insane Person,

Defendants.

COMPLAINT

Comes now the United States of America by Harry O. Arend, United States Attorney for the Fourth Judicial Division of the Territory of Alaska, at the direction and under the authority of the Attorney General of the United States, pursuant to the request of the Comptroller General of said United States, and represents and complains as follows:

I.

That, on the 19th day of July, 1927, in the Probate Court for Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, said defendant, George Gartner, after proceedings duly had, was adjudged an insane person and by the Honorable M. R. Boyd, United States Commissioner and ex-officia Probate Judge of said Probate Court, ordered committed to Morningside Hospital at Portland,

Oregon, under the provisions of the Act of Congress of January 27, 1905, (33 Stat. 619, 48 U.S.C. Sec. 47) and the Act of Feb. 6, 1909, (35 Stat. 601, 48 U.S.C. Sec. 46).

II.

That, on the 1st day of August, 1927, the defendant, Mike Erceg, was duly and regularly appointed Guardian of the Estate of the said George Gartner, an insane person, by order of the said M. R. Boyd, United States Commissioner and ex-officio Probate Judge of the Probate Court for said Fairbanks Precinct; and that the said Mike Erceg on said 1st day of August, 1927, accepted said appointment and duly qualified by taking oath and executing bond, which was by said Probate Judge duly approved, all as required by law, [1*] and ever since said 1st day of August, 1927, said defendant, Mike Erceg, has been, and is now, the guardian of said Estate.

III.

That the said defendant, George Gartner, was admitted to said Morningside Hospital on the 10th day of August, 1927, under said order of commitment, and has remained there continuously since said last mentioned date; and that the said George Gartner is now, and at all times since the 19th day of July, 1927, has been, an insane person.

IV.

That between said 10th day of August, 1927, and the 13th day of October, 1942, both dates inclusive, the plaintiff has expended the total sum of Nine Thousand One Hundred Eighty and 11/100 Dollars

(\$9,180.11) for the care and maintenance of the said George Gartner at said Morningside Hospital, at Portland, Oregon; that said sum of \$9,180.11 is the reasonable cost of the care and maintenance of said defendant, George Gartner, at said hospital during the period aforesaid; and that said defendant, George Gartner, is justly indebted to the plaintiff in said sum of \$9,180.11.

V.

That the plaintiff has made demand upon the said George Gartner, defendant, through his said Guardian, Mike Erceg, for payment of said \$9,180.11; that payment was refused; and that no part of said sum of \$9,180.11 has been paid.

Wherefore the plaintiff prays judgment against the said defendant, George Gartner, for the sum of \$9,180.11, and for the cost of suit and for such other and further relief as to the Court may seem proper.

THE UNITED STATES OF
AMERICA,

/s/ By HARRY O. AREND,

United States Attorney for
Fourth Judicial Division,
Territory of Alaska.United States of America,
Territory of Alaska—ss.

Harry O. Arend, being first duly sworn, on oath deposes and says: That he is the agent of the plaintiff herein with personal knowledge of the [2] material allegations contained in the foregoing com-

plaint; that he has read said complaint, knows the contents thereof, and believes the same to be true.

HARRY O. AREND.

Subscribed and sworn to before me this 24th day of August, 1945.

[Seal] EMMA M. COOK,
Notary Public in and for
Alaska.

My commission expires 8/22/47.

[Endorsed]: Filed Aug. 24, 1945. [3]

[Title of District Court and Cause.]

DEMURRER

Comes now the above-named defendant and demurs to the Complaint on file herein upon the grounds:

1. That the Court has no jurisdiction of the subject of the action.
2. That the Complaint does not state facts sufficient to constitute a cause of action.

JOHN L. McGINN,
Attorney for Defendants.

Service of the foregoing Demurrer is hereby acknowledged this 6th day of September, 1945.

HARRY O. AREND,
Attorney for Plaintiff.

[Endorsed]: Filed Sept. 6, 1945. [4]

[Title of District Court and Cause.]

ORDER

Arguments on the Defendant's Demurrer to the Complaint having been had by respective counsel on September 17 and 18, 1945, and the Court having taken the matter under advisement and now being fully advised in the premises, it was Ordered that the Demurrer be overruled and the defendants were granted thirty days to answer.

October 31, 1945.

Journal No. 33, Page 14. [5]

[Title of District Court and Cause.]

Harry O. Arend, United States Attorney, of Fairbanks, Alaska, Attorney for the plaintiff;

John L. McGinn, of Fairbanks, Alaska, attorney for the defendants.

OPINION

I.

The complaint, filed on August 24, 1945, alleges as follows: That on the 19th day of July, 1927, the defendant George Gartner was legally adjudged insane in the Probate Court at Fairbanks, Alaska, and Committed to Morningside Hospital at Portland, Oregon; that on the 1st day of August, 1927, the defendant Mike Erceg was duly appointed guardian of the estate of said George Gartner by order of said Probate Court, he qualifying immedi-

ately; that said George Gartner was admitted to said Morningside Hospital on the 10th day of August, 1927, where he has since remained; that the plaintiff has paid the reasonable cost of the care and maintenance of said George Gartner at said Hospital during the said period, to-wit, the sum of \$9,180.11, no part of which has been paid though demanded of the defendant Erceg, as such guardian.

The complaint does not allege that said George Gartner was a pauper, but inferentially shows he was not in that he had property for which a guardian was appointed on the 1st of August, 1927.

The defendants have interposed a general demurrer to the complaint. [6]

II.

As our code made the common law of England, except as modified by statute, the law of Alaska during all time concerned in this case, it becomes necessary to ascertain what the common law was with reference to reimbursement of the sovereign for expenses incurred in the care of an insane person.

In *State v. Ikey's Estate* (Supreme Court of Vermont, 1911) 79 Atl. 850, it was stated:

“It is said by Lord Coke that if a man who was of sound memory becomes non compos mentis, * * * the king shall protect him who cannot protect himself, and shall take the profits of his lands, and of all that he had, and therewith maintain him and his family; but the king shall not take any part of the said

profits to his own use, and that all this appears by the statutes De Praerogativa Regis, 17 Edw. 11, c. 10, which was but a declaration of the common law.”

“Pollock and Maitland in their History of English Law (volume 1, p. 464) say this document known as Praerogativa Regis seems to be the oldest that gives any clear information about a wardship of lunatic.

“ ‘The king is to provide that the lunatic and his family are properly maintained out of the income of his estate * * *’ Bac. Abr. tit. Idiots and Lunatics C. * * *

“Mr. Stephen says: ‘To all lunatics, as well as to idiots, the sovereign is guardian, but to a very different purpose; for the law always imagines that these accidental misfortunes may be removed; and therefore only constitutes the crown a trustee for the unfortunate persons, to protect their property, and to account to them for all profits received, if they recover, or after their decease, to their representatives.’ 2 Stephen’s Com. (8th Ed.) 511.”

The Court said:

“By the common law of England it is the duty of the king to take care of all his subjects who, by reason of their imbecility and want of understanding, are incapable of taking care of themselves.”

“Under our form of government the sovereign state has the same common-law duty resting upon it concerning the care and custody of persons and estates of those who are idiots from nativity, or who have lost their intellects, and become non compos, or unable to take care of themselves * * *; and it is manifest from the statutory regulations in this respect that the policy of the state is, as at common law, that the estates of such wards shall be appropriated to their proper maintenance, before they can be supported at the expense of the state.” [7]

A holding contrary to that of *State v. Ikey's Estate*, supra, is found in 44 C.J.S., page 177, in the statement, “At common law states and municipalities were not charged with the duty of supporting insane or incompetent persons.” It is based entirely upon the case of *State Department of Public Welfare v. Shirley* (Wisc., 1943) 10 N.W. (2d) 215.

That case lays down the rule above-mentioned, citing only the cases of *Patrick v. Town of Baldwin* (Wisc., 1901) 85 N.W. 274, and *Coffeen v. Town of Preble* (Wisc., 1910) 125 N.W. 954, neither of which hold anything in regard to the duty of a state (or sovereign) toward insane persons, but merely that towns did not at common law have the duty of supporting poor persons.

A distinction between poor persons and insane persons is made, not only at common law, but in most modern statutes.

In the case of *Richardson County v. Frederick, et al.*, (Neb., 1888) 39 N.W. 621, the court said:

“The insane person is not consulted as to whether he shall be deprived of his liberty or not; nor, indeed, are his friends or relatives. As is said in *County of Delaware v. McDonald*, 46 Iowa, 171: ‘The state reaches out its strong arm and makes the insane its wards, regardless of the care which they may receive at home, or the wishes of those upon whom they are dependent for their support. The poor are not deprived of their liberty, and we know of no law which would even permit the county or state authorities to wrest such persons from the care and custody of relatives and friends, and confine them in a poor-house; nor would they be so confined, against their own consent, for no other reason than that they were “unable to earn a livelihood in consequence of any bodily infirmity,” etc. With the insane it is entirely different. * * * Society is entitled to be protected and relieved against him; * * *’”

In *Dandurand v. Kankakee County* (11, 1902) 63 N.E. 1011, *Dandurand*, an insane person, was cared for by the county which sued to recover the cost thereof. The court said:

“He (*Dandurand*) was in need of board, care and medical attention, and was obviously unfit to be at large, and the county furnished him that care. His conservator knew the facts, and did not offer to provide for him elsewhere, or

take any steps to have any change made. We are of opinion defendant was impliedly liable for these necessaries so furnished him. * * *”

In *re Yturburru's Estate* (Sup. Ct., Calif., 1901) 66 P. 729, the court held:

“An insane person is liable for the reasonable value of things furnished to him necessary for his support. Civ. Code, sec. 38. This was so at common law, where the necessaries were furnished by an individual; and we have never seen a case, and do not think any can be found, holding that this rule comes in conflict with any provision of the Constitution of this or any other state of the Union. We see no reason why the same rule should not apply to a state hospital for the insane which does and furnishes for the insane person only those things required by the law of the state.”

The court, in the case of *Directors of Insane Asylum of New Mexico v. Boyd, et al.*, (N. Mex., 1932), 17 P. (2d) 358, quoted the above by the California court and, in holding the guardian of Boyd liable for her care at the asylum, stated:

“The weight of authority seems to be in accord with this opinion,” citing many cases.

In *re Boles' Estate* (Sup. Ct., Pa., 1934) 173 Atl. 664, the court said:

“At common law a lunatic was liable in quasi contract for support. * * *”

To the same effect was the decision of the same court in *re Walters*, 123 Atl. 408.

In the case of *Palmer, et al., v. Hudson River State Hospital* (Kan., 1900) 61 P. 506, the court said:

“In the first place, it is contended that there must have been an express contract between the hospital and the insane person, or her guardian, to make her estate liable for her necessary maintenance and care. We do not so understand the law. On the contrary, the estate of an insane person is liable for necessaries furnished him upon an implied contract.”

In *Kaiser v. State* (Kan., 1909) 102 P. 454, the court said:

“Whether in the absence of a statute the estate of an insane person is chargeable with the expense of his maintenance at a public institution is a question upon which there is some conflict in the authorities. * * * Such liability is denied in these cases: *Montgomery Co. v. Gupton* * * * (Mo.), 39 S.W. 447, 40, S.W. 1094; *Oneida Co. v. Bartholomew*, * * * 31 N.Y. Supp. 106, affirmed * * * 46 N.E. 1150; *State v. Colligan* * * * (Iowa) 104 N.W. 905. These cases have a contrary tendency: *McNairy Co. v. McCoin* * * * (Ill.) 63 N.E. 1011; *Palmer v. Hospital* * * * (Kan.) 61 Pac. 506.” [9]

In *State ex rel Hilton v. Probate Court, etc.*, (Minn. 1919) 171 N.W. 928, the court said:

“Whether, in the absence of a statute, the estate of an insane person is chargeable with his maintenance at a public institution, is a

question upon which there is a diversity of judicial opinion. * * * However, we are not greatly concerned with the rule applicable in the absence of a statute, in view of the history of the legislation of the past 45 years upon the subject under consideration.”

In *re Idleman's Commitment; Idleman v. State*; (Ore., 1933) 27 P. (2d) 305, the court said:

“Some courts declare that those who possess estates ought not expect the public to support them free of charge in the state hospitals, and have allowed judgment against the estates of the inmates, even in the absence of statutes.”

In *Luder's Adm'r v. State* (Tex. App., 1912) 152 S.W. 220, it was held, as set forth in the syllabus:

“The remedy prescribed by Rev. St. 1895, art. 116, for the reimbursement by the state of expenses for maintaining patients in insane asylums, is not exclusive, and does not affect the common-law right of the state to recover for money expended in the care of a demented person against his guardian or other person liable for his support, based on implied duty to pay for the benefits received without reference to the lunacy proceedings, and the common-law remedy is unaffected by the fact that the lunatic is dead, and an action may be maintained against his administrator.”

(Note contrary opinion, *Wiseman v. State* (Tex. App. 1936) 94 S.W. (2d) 265.)

In *Board of Chosen Freeholders of Camden County v. Ritson* (N.J., 1903) 54 Atl. 839, where the New Jersey statute provided that the insane person and his estate should be liable for the expense of his care in the county hospital, the court said:

“This statute in that regard is but declaring of that which was a fact at common law, * * *.”

Where a municipality or county is by statute vested with a sovereign's duty, it is subject to the same rules and rights (unless the statute provides otherwise) with reference to that duty that the sovereign would be if it had performed the duty.

In *re Erny's Estate* (Sup. Ct. Penn., 1940) 12 Atl. (2d) 333.

III.

In 32 C.J., page 687, sec. 374, it states:

“While there is some dicta to the effect that, under the common law, the estate of a lunatic was liable for his maintenance at public expense (87) * * *, it is generally held that at common law and in the absence of express contract or deception as to the ability to support himself, the public authorities may not recover from the lunatic or his estate the expenses incurred on his account, (93) * * *.”

In note 87 appears only the case of *Board of Chosen Freeholders of Camden County v. Ritson* (N.J.), *supra*.

In 44 C.J.S., page 177, the word “dieta” has been dropped, and it states:

“There is some authority to the effect that, under the common law, the estate of a lunatic was liable for his maintenance at public expense, * * *.”

The cases cited under note 93 and under the same rule in 44 C.J.S., page 178, note 17, when analyzed, give very little support to the rule stated in *Corpus Juris*.

In the case of *Board of Commissioners v. Ristine* (Ind., 1890), 24 N.E. 990, there was an express contract between the guardian and the county commissioners that they should keep an insane person in the county poorhouse. The court held that under the Indiana statutes they had no authority to make such contract. Nothing is stated as to the common law, and, if there is any inferential reference to it, it would be *obiter dictum*.

The following cited cases, to-wit, *Montgomery County v. Gupton* (Mo., 1897), 39 S.W. 447; *Jones County v. Norton* (Iowa, 1894) 60 N.W. 200; *Bremer Co. v. Curtis* (Iowa, 1880) 6 N.W. 135; *State v. Colligan* (Iowa, 1905) 104 N.W. 905; *Oneida County v. Bartholomew* (1894), 31 N.Y.S. 106 erroneously apply the common law rule relative to paupers to cases involving insane persons and [11] negative the right of reimbursement to the public authorities.

Neither the sovereign, nor the county, nor a municipality was at common law required to give care to paupers. 48 C.J., page 432. So any such aid would have been a voluntary gift. On the other hand, the rule as to insane persons was that

the sovereign was required to give such care and was entitled to reimbursement, as set forth in *State v. Ikey's Estate*, supra; also 32 C.J. 626, paragraph 162.

The case of *Brown's Committee v. Western State Hospital* (Va., 1909) 66 S.E. 48, seems to have been decided upon agreement of counsel in court. No study of the authorities on the point is indicated.

In *re Bedford* (Juvenile and Domestic Relations Court of New Jersey, 1933) 168 Atl. 134, the New Jersey statutes clearly covered the whole situation, and the case was decided upon them. Nevertheless, the court cited 32 C.J. section 374, supra, with approval. It was clearly dicta.

In *Wiseman v. State* (Court of Civil Appeals, Texas, 1936) 94 S.W. (2d) 265, Texas had a complete statutory system for the care of the insane, including liability of such persons and their legal representatives for the cost of their care. The court decided the case entirely upon the Texas statutes. Nevertheless, it quoted and cited 32 C.J., section 374, supra, and also 14 R.C.L., page 566, section 18.

Said section 18 of 14 R.C.L. does not support such a holding but merely states there is a conflict of authority and cites one case for and one case against the rule.

When the cases on the subject are analyzed, it appears that the weight of authority is to the effect that at common law the sovereign was entitled to be reimbursed for expenses incurred in caring for the insane. [12]

IV.

Such being the common law, search will be made of the statutes to see if they provide otherwise.

In all of the time mentioned in this case, the statutes of Alaska have provided that insane persons at large should be tried by jury and committed to an asylum for care when found to be really insane (Section 4671, C.L.A., 1933), the asylum to be one with which a contract had been made on behalf of the United States, which was to pay for the cost thereof (section 4676, C.L.A. 1933). No distinction was made between insane paupers and insane people of property, and no provision was made for reimbursing the sovereign for the expense.

It was provided, however, that a guardian could be appointed for the estate of insane persons and that he should apply the income and profits (and under order of court, the principal) to the comfortable and suitable maintenance and support of his ward (section 4528 and 4546, C.L.A., 1933).

By act of congress, approved April 24, 1926, 44 Stat. 322, chapter 177, consisting of two sections, provided that insane persons should deposit their money with the asylum under contract for the care of Alaskan insane and that, if any such property was still so deposited upon their death or elopement and was unclaimed by the insane person or his legal heirs within five years of death or elopement, the money should be covered into the Treasury of the United States. It further provided that, in every instance of death or elopement where money remained in the hands of the asylum, the Secretary

of the Interior should make diligent inquiry as to the whereabouts of the insane person or his legal heirs and thereafter turn over the money to the proper party.

At first reading it would seem that congress did not expect the insane person to owe the United States anything, or it would [13] have provided for such money to be credited upon the debt, if any. However, these same sections appear to the same effect as amended and extended in the act of congress, approved October 14, 1942, 56 Stat. 782, which definitely provides for reimbursement of the United States.

Thus it appears that the failure to provide that moneys received from patients in the asylum should be credited upon any debt owing the United States was not indicative of an intention on the part of the United States to pay all expenses of caring for an inmate without any claim for reimbursement.

By act of congress, approved October 14, 1942, 56 Stat. 782, it was provided in sections 9 and 10 as follows:

“Sec. 9. It shall be the duty of a patient, or his legal representative, spouse, parents, adult children, in that sequence, to pay or contribute to the payment of the charges for the care or treatment of such patient in such manner and proportion as the Secretary may find to be within their ability to pay: Provided, That such charges shall in no case exceed the actual cost of such care and treatment. The order of

the Secretary relating to the payment of charges by persons other than the patient, or his legal representatives shall be prospective in effect and shall relate only to charges to be incurred subsequent to the order: Provided, however, that if any of the above named persons wilfully conceal their ability to pay, such persons shall be ordered to pay, to the extent of their ability, charges accruing during the period of such concealment. The Secretary may cause to be made such investigations as may be necessary to determine such ability to pay, including the requirement of sworn statements of income by such persons.

“Sec. 10. Any acts or parts thereof, in conflict with the provisions hereof are hereby repealed.”

As a statute is to be interpreted as having a prospective effect, unless it clearly appears to have been the intention of the law-making body that it should have a retrospective effect (59 C.J., page 1159), said section will be examined with the rule in view.

The statement that the order of the Secretary as to the payment of charges by persons other than the patient or his legal representatives shall be prospective and relate only to charges to be incurred subsequent to the order infers a different rule as to the patient or his [14] legal representative. However, if we interpret the section to mean that the order of the Secretary relating to charges to be paid by the patient or his legal representative shall be

prospective and retrospective to the effective date of the act, to-wit, October 14, 1942, the inference will be satisfied. As no clear intention on the part of congress to make the section relate to charges arising prior to October 14, 1942, appears, it will be necessary to so interpret said section.

Therefore, said act of congress of October 14, 1942, continued the common law duty of the patient or his legal representative to reimburse the government for the expense in caring for an insane person. It limited the duty of the manner and proportion that the Secretary should find to be with their ability to pay, thus requiring such finding for charges incurred after the passage of that act. It, in no way, affected the common law right to reimbursement existing in the government prior to the act and did not provide any procedure relative thereto.

Consequently, as the plaintiff in this case had a vested right to reimbursement prior to October 14, 1942, and was not required to obtain any finding on the part of the Secretary of the Interior as to the ability of the defendants to pay, the complaint in this case states a cause of action, and the demurrer should be overruled.

Done at Fairbanks, Alaska, this 31st day of October, 1945.

/s/ HARRY E. PRATT,
District Judge.

[Endorsed]: Filed Oct. 31, 1945. [15]

[Title of District Court and Cause.]

AMENDED ANSWER

Comes Now the Defendants and for answer to Complaint of Plaintiff on file herein allege and admit as follows:

I.

Admits Paragraphs I, II, III, and V of said Complaint.

II.

Answering Paragraph IV of said Complaint the defendants allege that they have no information or knowledge sufficient to form a belief as to whether or not between the 10th day of August, 1927, and the 13th day of October, 1942, the Plaintiff expended the total sum of nine thousand one hundred eighty dollars and eleven cents (\$9,180.11), or any other sum for the care or maintenance of defendant, George Gartner, at Morningside Hospital, at Portland, Oregon, and based upon such want of knowledge or belief they therefore deny the same. Deny tiff in the sum of nine thousand one hundred eighty dollars and eleven cents (\$9,180.11) or any other sum, is the reasonable cost of the care or maintenance of said defendant, George Gartner, at said hospital during said period. Deny that said defendant, George Gartner, is justly indebted to the plaintiff in the sum of nine thousand one hundred eighty dollars and eleven cents (\$9,180.11), or any [16] other sum.

And the defendants for a further and separate answer, and as their first affirmative defense allege:

I.

That during all of the time mentioned in the Complaint, plaintiff by Congressional acts appropriated monies annually for the care and maintenance of insane persons who were adjudged to be insane, and ordered by reason thereof, to be committed to the Morningside Hospital at Portland, Oregon, by the Courts of Alaska. That said appropriations were made as a gratuity and charity and without any thought or expectation upon the part of Congress or plaintiff that any part thereof was to be repaid to plaintiff by said insane person or his legal representative. That ever since the "Act of May 17, 1884, providing for the Civil Government of Alaska" (23 Stats. 24), and up until the Act of Congress of October 14, 1942 (56 Stat. 782), relating to the care and maintenance of insane persons, in Alaska, plaintiff never requested or made any demand, upon any insane person or his legal representative, for reimbursement for any monies that may have been expended by plaintiff for the care and maintenance of insane persons pursuant to the Acts of Congress. That by its acquiescence from the year of 1884 to the year of 1942 in said policy the plaintiff should not now be permitted to assert that monies expended by it as a gratuity and as a charity should be recovered from insane persons, their legal representatives, or relatives.

And the defendants, for a further and separate answer, and as their second affirmative defense, allege:

I.

That this cause was filed on the 24th day of August, 1945, and summons was issued by this Court on the 24th day of August, 1945. That the plaintiff did not commence this action within the time limited by law for the recovery of sums expended by it prior to the 24th day of August, 1939, and that all sums expended by plaintiff between the 10th day of [17] August, 1927, and the 24th day of August, 1939, are barred by the statute of limitations in effect in the Territory of Alaska.

Wherefore, defendants pray that plaintiff take nothing by this action, and that they have judgment for their costs and disbursements herein.

JOHN L. McGINN,
COLLINS & CLASBY,
By CHAS. J. CLASBY,
Attorneys for Defendants.

United States of America,
Territory of Alaska—ss.

Mike Erceg, being first duly sworn, on oath deposes and says:

That he is one of the defendants in the above entitled action and has read the foregoing Answer and the same is true as he verily believes.

MIKE ERCEG.

Subscribed and sworn to before me this 17th day of December, 1945.

[Seal] CHAS. J. CLASBY,
Notary Public in and for the Territory of Alaska.

My commission expires April 20, 1948.

Copy received this 17th day of December, 1945.

HARRY O. AREND,
United States Attorney.

[Endorsed]: Filed Dec. 18, 1945. [18]

[Title of District Court and Cause.]

DEMURRER

Comes now the plaintiff above named and demurs to the first and second affirmative defenses contained in the defendants' Amended Answer herein for the reason that said two affirmative defenses, and each of them, do not state facts sufficient to constitute defenses to the plaintiff's complaint on file herein.

Dated at Fairbanks, Alaska, this 6th day of February, 1946.

HARRY O. AREND,
United States Attorney.

Service of the foregoing Demurrer by receipt of copy thereof this 6th day of February, 1946, is hereby acknowledged.

CHAS. J. CLASBY,
Of Counsel for Defendants.

[Endorsed]: Filed March 1, 1946. [19]

[Title of District Court and Cause.]

ORDER

The Court having heard arguments by respective counsel in this cause on the plaintiff's demurrer to the Amended Answer on March 21, 1946, and having taken the matter under advisement and now being fully advised in the premises, it was Ordered that the Demurrer be sustained as to each of the affirmative defenses.

March 26, 1946.

Entered in Court Journal No. 33, Page 314. [20]

[Title of District Court and Cause.]

SECOND AMENDED ANSWER

Comes Now the Defendants and for their second amended answer to Complaint of Plaintiff on file herein allege and admit as follows:

I.

Admits Paragraphs I, II, III, and V of said Complaint.

II.

Answering Paragraph IV of said Complaint the defendants allege that they have no information or knowledge sufficient to form a belief as to whether or not between the 10th day of August, 1927, and the 13th day of October, 1942, the plaintiff expended the total sum of nine thousand one hundred eighty dollars and eleven cents (\$9,180.11), or any other sum for the care or maintenance of defendant,

George Gartner, at Morningside Hospital, at Portland, Oregon, and based upon such want of knowledge or belief they therefore deny the same. Deny that said sum of nine thousand one hundred eighty dollars and eleven cents (\$9,180.11) or any other sum is the reasonable cost of the care or maintenance of said defendant, George Gartner, at said hospital during said period. Deny that said defendant, George Gartner, is justly indebted to the plaintiff in the sum of nine thousand one hundred eighty dollars and eleven cents (\$9,180.11), or any other sum. [21]

Wherefore, defendants pray that plaintiff take nothing by this action, and that they have judgment for their costs and disbursements therein.

JOHN L. McGINN,

COLLINS & CLASBY,

By CHAS. J. CLASBY,

Attorneys for Defendants.

United States of America,
Territory of Alaska—ss.

Mike Erceg, being first duly sworn, on oath deposes and says:

That he is one of the defendants in the above entitled action and has read the foregoing Second Amended Answer and the same is true as he verily believes.

MIKE ERCEG.

Subscribed and sworn to before me this 29th day of April, 1946.

CHAS. J. CLASBY,

Notary Public in and for the Territory of Alaska.

My commission expires April 20, 1948.

Copy received this 29th day of April, 1946.

HARRY O. AREND,

United States Attorney.

[Endorsed]: Filed April 29, 1946. [22]

In the District Court for the Territory of Alaska

Fourth Judicial Division

No. 5368

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE GARTNER, an Insane Person, and

MIKE ERCEG, Guardian of the Estate of

George Gartner, an Insane Person,

Defendants.

VERDICT

We, the Jury, duly empaneled and sworn to try the above-entitled case, do, from the law and the evidence therein, find the issues joined therein in favor of the plaintiff and against the defendants and that the defendants are indebted to the plaintiff

for the matters set forth in the complaint herein in the sum of \$9180.11, due October 13, 1942.

Done at Fairbanks, Alaska, this 20th day of November, 1946.

B. B. GREEN,
Foreman.

Nov. 20, 1946. Entered in Court Journal No. 34, Page 253.

[Endorsed]: Filed Nov. 20, 1946. [23]

In the District Court for the Territory of Alaska

Fourth Judicial Division

No. 5368

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE GARTNER, an Insane Person, and
MIKE ERCEG, Guardian of the Estate of
George Gartner, an Insane Person,

Defendants.

JUDGMENT

The above entitled cause came on regularly for trial on the 20th day of November, 1946, before the Court sitting with a jury, the plaintiff appearing by and through Harry O. Arend, United States Attorney, and Wm. E. Berrett, Assistant United States Attorney, the defendants appearing by and through

their attorney, Chas. J. Clasby, and the defendant, Mike Erceg, having also appeared in proper person; and evidence having been introduced by both parties, the case argued, and the jury instructed by the Court, and the jury having thereupon rendered the following verdict, to-wit:

“We, the Jury, duly empaneled and sworn to try the above-entitled case, do, from the law and the evidence therein, find the issues joined therein in favor of the plaintiff and against the defendants and that the defendants are indebted to the plaintiff for the matters set forth in the complaint herein in the sum of \$9180.11, due October 13, 1942.

Done at Fairbanks, Alaska, this 20th day of November, 1946.

B. B. GREEN,
Foreman.”

Whereupon, by virtue of the law and by reason of the evidence aforesaid,

It is Ordered, Adjudged and Decreed that the plaintiff do have and recover of and from the defendant George Gartner and from the defendant Mike Erceg as Guardian of the Estate of George Gartner, an insane person, the sum of nine thousand one hundred eighty and 11/100 dollars (\$9,180.11), with interest at the [24] rate of six per cent (6%) per annum from the date hereof until paid, together with plaintiff's costs herein in the sum of \$83.00 to be taxed by the Clerk of this Court.

Let execution issue accordingly.

Done at Fairbanks, Alaska, this 6th day of December, 1946.

/s/ HARRY E. PRATT,
District Judge.

Service of the foregoing Judgment by receipt of a copy is hereby admitted this 5th day of December, 1946.

/s/ CHAS. J. CLASBY,
Of Counsel for Defendants.

Dec. 6, 1946. Entered in Court Journal No. 34, Pages 291-292.

[Endorsed]: Lodged and filed Dec. 6, 1946. [25]

[Title of District Court and Cause.]

TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

Harry O. Arend, United States Attorney, and William E. Berrett, Assistant United States Attorney, both of Fairbanks, Alaska, attorneys for the plaintiff.

John L. McGinn and Collins & Clasby, of Fairbanks, Alaska, attorneys for the defendants.

The above cause came on regularly for trial at ten o'clock a. m., Wednesday, November 20, 1946, before the Honorable Harry E. Pratt, Judge of the above-entitled court, at Fairbanks, Alaska, and the following is the transcript of the testimony given and the proceedings had therein.

The attorneys present at the trial of said cause were: Harry O. Arend and William E. Berrett for the plaintiff; Charles J. Clasby of Collins & Clasby for the defendants. [26]

The Court: Are counsel ready to proceed with the trial of United States against George Gartner, an Insane Person, and Mike Erceg, Guardian of the Estate of George Gartner, an insane person?

Mr. Clasby: The defendant is ready.

Mr. Arend: The plaintiff is ready.

(Thereupon the jury was duly empaneled and sworn, and the following proceedings were had:)

JOHN LEROY HASKINS

called as a witness on behalf of the plaintiff, having been first duly sworn by the Clerk of the Court, testified as follows:

Direct Examination

By Mr. Arend:

Q. Will you state your full name, please?

A. John LeRoy Haskins.

Q. Where do you reside?

A. Portland, Oregon.

Q. How long have you resided there?

A. Oh, ten years and five—six—five months, I think.

Q. Are you a practicing physician and surgeon in any state?

(Testimony of John LeRoy Haskins.)

A. I have a license in several states.

Q. What has been your medical education and premedical education?

A. Well, I had my college education at Carleton College in Northfield, [28] Minnesota; graduated from the University of Minnesota Medical School; internship, University Hospital, Minneapolis; four years in the United States Army in the medical corps and discharged with the rank of Major. After being discharged from the army, I went back to the University of Minnesota for some graduate work in medicine. I was in general practice of medicine from '21 to '28, general practice of medicine. In 1928 I went to New York on the staff of King's Park State Hospital there. I remained there in the New York state service until 1936, except for part of a year when I did graduate work at the University of Columbia in psychiatry. In 1936 I went to Morningside Hospital as medical supervisor on civil service appointment, after taking a competitive civil service examination. I have been there since that time.

Q. What degrees do you hold?

A. Bachelor of Science and Doctor of Medicine.

Q. Are you both a licensed physician and surgeon?

A. Well, your M.D. license gives you the right to practice either.

Q. Have you practiced both?

A. I have done some surgery, yes, but for the past eighteen years I have done nothing but psychiatry.

(Testimony of John LeRoy Haskins.)

Q. What hospital connections do you have at the present time?

A. I am on the teaching staff at the Oregon University. We teach psychiatry at the University of Oregon Medical School, and that [29] places you on the staff of the hospitals connected with the University in Portland. There are several hospitals there that are connected with the University.

Q. Do you belong to any medical associations?

A. I belong to the American Medical, the American Psychiatry, the North Pacific Neuropsychiatric, the Oregon Neuropsychiatric Association, of which I have been president. I am on the Board of Directors of the North Pacific Neuropsychiatric. I have been president of the Oregon Mental Hygiene Society.

Q. In what line of work do you specialize, if any?

A. Psychiatry.

Q. Psychiatry. How long have you so specialized?

A. I have done nothing but psychiatry and hospital administration since 1928.

Q. How long have you been at Morningside Hospital?

A. I went there in July, I believe, 1936.

Q. Who operates Morningside Hospital?

A. Morningside Hospital is owned by the Sanitarium Company and it is leased—or, it is under contract with the Division of Territories and Island Possessions of the Department of the Interior to

(Testimony of John LeRoy Haskins.)

care for regularly committed mentally ill patients from Alaska.

Q. How many official patients have you from Alaska? A. About 360 at the present time.

Q. Do you take any others than from Alaska?

A. We take public health service cases; that is, there is no mental hospital for patients of the United States Public Health Service in that area, and we take a few emergency cases for the Public Health Service, and we always have several there—sometimes six or seven, sometimes fewer. We have had a few female veterans; that is, there was no veterans' hospital in the area where women patients could be taken care of, and we have taken care of one or two as an accommodation for the Veterans' Bureau.

Q. About how many do you have now? The total number? A. We have 365 patients.

Q. How many of those are from Alaska?

A. Around 358 or 359.

Q. Are you personally familiar with all of the cases?

A. Yes. I am familiar with every patient in the hospital. I have interviewed them all at intervals. I see every patient practically every day. In a small group like that you can do that: see every patient every day.

Q. Doctor, how is the hospital staffed?

A. My position there is as the medical director, and I am employed by the Department of the In-

(Testimony of John LeRoy Haskins.)

terior. The rest of the staff—the other doctor, a full-time man, is employed by the Sanitarium Company, and the two internes are employed by the Sanitarium Company.

Q. How many employees are there? [31]

A. You mean employees of all kinds?

Q. Yes, employees of all kinds.

A. I think somewhere around seventy-five.

Q. How many rooms and wards are there in the hospital?

A. Well, there are two large male wards; there is a male parole ward, a male tubercular ward, a male infirmary ward; and then there is the acute female ward, chronic female ward, female tuberculosis ward, female infirmary. We are opening a new building for about fifty, which should be opened this month sometime if we have any luck on supplies.

Q. How many patients can you handle comfortably?

A. We could handle about 375. At the present time we have ten or twelve patients there, who are ready for release, because of the shipping strike.

Q. Will you state to the jury what type of care is provided for the patients of the Morningside Hospital?

A. Well, take when the new patient comes in, this patient is examined, a physical examination which includes ordinary blood tests and X-Ray of the chest. We X-Ray all of the chests of these natives, particularly the natives because we have a very high incident of tuberculosis; about thirty per

(Testimony of John LeRoy Haskins.)

cent of the natives have tuberculosis. We give a careful physical examination and X-Ray of any other special thing which is needed—blood, spinal fluid, Wassermanns. Then there is a mental examination which might last a considerable length of time. We [32] get all of the history we can from the nurse so that we can get the background of the person when he comes in to help in our diagnosis. This routine may take a week or two, depending on any special examination which may be needed by the ward. Their meals are served—Those persons who are up and about go to a cafeteria where they have their meals. Then if there is no counter-indication, the patient goes to the occupational therapy shop. These shops are staffed by trained people who attempt to get the patients to interest themselves in something, in something outside of their own delusional formation. They try to get them interested in doing something there in the shop. They try to get them interested in doing something there in the shop. They may have weaving or wood carving or carpenter work or pottery work, or anything that seems to be fitted for them. They go to the shop five days a week, afternoon and morning. Then we attempt to do something along the lines of recreation. We have Wednesday afternoon as moving picture day. The patients go to the movies on Wednesday afternoon and Wednesday night. Friday afternoon is dance afternoon for all the patients who are able to go to a dance. Sundays and Saturdays is

(Testimony of John LeRoy Haskins.)

church service class; we have about four or five denominations represented. Then during the summer we have various outside activities and games. We have special parties on Christmas, Thanksgiving, and Halloween, and those times we try to make the situation as near that of a home environment [33] as we can in trying to get away from the idea of the asylum idea, because they are sick; they are sick mentally and not physically. Then if there are any special types of treatment which are indicated, we use those; that is, we use the shock treatment; then the insulin shot, which is a complicated procedure which we have been the first hospital on the west coast to use, in 1937. Then we may use several other types of particular treatment. The idea is to get as many patients out of the hospital as we can. We don't want to keep them there. It isn't good for them, or not good for anyone else. We try to get them back into circulation in as good shape as we can.

Q. Who provides the clothing for the inmates?

A. The clothing is provided for the inmates by the Sanitarium Company. The contract which the Sanitarium Company makes specifies that the Sanitarium Company furnish everything for the patient: clothing, medical supplies, dental work, sufficient recreational facilities. Everything is provided by the Sanitarium Company under the contract.

Q. How many meals a day are the patients allowed?

(Testimony of John LeRoy Haskins.)

A. The ordinary patients in the wards have three meals a day. Those patients in the infirmary ward or the old ward have extra egg-nogs, extra meals, and extra food as indicated. Any special diets which we want to provide are given.

Q. Are you familiar with any other mental hospitals; that is, [34] the care and maintenance provided and the cost?

A. Yes. I have visited mental hospitals from as far east as Boston, Massachusetts, to Southern California, and a lot of points between. I have been at many government hospitals such as Saint Elizabeth's and veterans' hospitals.

Q. How long have you known of Morningside Hospital by actually being there or by repute?

A. I knew about it a year and a half or two years before I went there.

Q. How has it ranked with other institutions of a similar type throughout the country?

Mr. Clasby: To which we object, if the Court please. It has no bearing on the issues in this case.

The Court: Objection overruled.

Q. Just answer the question.

A. Well, we believe that our discharge ratio of admissions—that is, the number of patients discharged as compared with the number of patients admitted ranks as well up with any other hospitals, and our death rates are quite low.

Q. How does the care and maintenance furnished at Morningside compare with other mental hospitals?

(Testimony of John LeRoy Haskins.)

Mr. Clasby: We address the same objection to that question.

The Court: Objection overruled.

Q. You may answer the question. [35]

A. We believe that our—we know that our food—the patients—the food the patients have there is better than the average mental hospital. We very often have attendants or nurses tell us that the food that the patient gets there is better than the staff food in most hospitals. We believe that the care is—Our number of attendants to the patients is much higher than the average for the United States; that is, we have more attendants. You rate your number of attendants, having so many patients to each attendant. For instance, you would say we had three hundred patients and you had fifty attendants, you would have one attendant for six patients. We usually run one to five. We find many in the States run one to sixteen, one to eighteen, one to twenty. The proportion of attendants is higher, which we believe gives better care.

Q. Dr. Haskins, do you have anything to do with arriving at a contract figure between the Sanitarium Company—just yes or no—and the government?

A. No, except that the thing was shown to me before it was—That is arrived at by those bids. For instance, we will say the contract was up——

Mr. Clasby (Interposing): We object to the witness answering something that hasn't been asked him. He has already answered the question.

(Testimony of John LeRoy Haskins.)

The Court: Very well. Sustained.

Q. Are you familiar with Saint Elizabeth's Hospital? A. Yes. [36]

Q. Where is that located?

A. Right outside of Washington, across the Potomac River, at Washington, D. C.

Q. What type of hospital is it?

A. It functions as the mental hospital for the District of Columbia. They also have had in there a fair percentage of army and navy personnel, but the principal function is a mental hospital for the District of Columbia and Washington, D. C.

Q. Are you familiar with the veterans' hospitals throughout the country? A. Yes.

Q. And have you compared—are you familiar with the per capita costs at Saint Elizabeth's and the veterans' hospitals? A. Yes.

Q. Are you familiar with the comparative costs for care and maintenance at Saint Elizabeth's Hospital as far back as 1927?

A. Yes, I think we have those reports. The Bureau of Census——

Mr. Clasby (Interposing): Just answer the question.

Mr. Arend: Just answer the question "yes" or "no".

A. Yes.

Q. Can you say the same for the veterans' hospitals? Yes or no. A. Not for all years.

Q. For what years are you familiar? [37]

A. Well, I have the exact cost for several of the

(Testimony of John LeRoy Haskins.)

recent years and the approximate cost for a number of years before that.

Q. Are you acquainted with George Gartner?

A. Yes.

Q. How long have you known him?

A. I have known George since July, 1936.

Q. How many interviews have you had with him during that time, approximately?

A. I don't remember how many interviews, formal interviews—a great many, and you see him practically day after day in the wards so that you would know his condition.

Q. You know his mental condition?

A. Well, yes.

Q. Over the ten-year period?

A. That is my job: to know the mental condition of the patients.

Q. Are you familiar with the type of care and maintenance that he has received at Morningside Hospital while you have been there?

A. Yes.

Q. Are you familiar with his case history from 1927? A. Fairly familiar, yes.

Q. You are familiar with the fact that he came to Morningside in August, 1927? A. Yes.

Q. And he is there now? A. Yes. [38]

Q. He has been there continuously?

A. He was there continuously. I think he has been there ever since.

Q. Has he been there continuously since August, 1927?

(Testimony of John LeRoy Haskins.)

A. Yes. According to the records, he has been there continuously during that period.

Q. Now, Dr. Haskins, I would like to have you state to the jury what, in your opinion, was the reasonable value of the care and maintenance provided Mr. George Gartner at Morningside Hospital, on a monthly basis, per month during 1927?

Mr. Clasby: To which we object, if the Court please, for several reasons. The first, this witness was not present at the hospital in 1927 and has no personal knowledge of the services that were then performed for George Gartner. This witness was not then a member of the staff of the Sanitarium Company and has no knowledge of what it cost the Sanitarium Company to supply those services or what the reasonable value of those services were. This witness has further testified that at that time he was in New York—or, no—he was in the general practice of medicine. He was not even connected with psychiatry or had any knowledge of hospitals for insane patients.

The Court: We will take a recess at this time.

(A ten minute recess was taken, after which court was duly reconvened.) [39]

The Court: Will counsel stipulate that all members of the jury are present?

Mr. Arend: We stipulate.

Mr. Clasby: We so stipulate.

The Court: Read the last question, please.

(The last question was read by the reporter.)

(Testimony of John LeRoy Haskins.)

The Court: All right. Objection overruled.

Mr. Arend: Will you answer?

A. About \$52.00 a month.

Q. Will you give us your answer to the same question for the year 1928?

Mr. Clasby: Just a moment. To which we interpose the same objection, if the Court please. The witness' testimony shows in 1928 he was in private practice; he had no familiarity with this institution or this patient or costs at psychiatric institutions. It hasn't been shown that he has any records or information available to him from which to form an opinion as to the cost in 1928, the same as our objection to the year 1927. There is other and better evidence that can be produced to establish that cost, and that is the record of the sanitarium itself.

The Court: Objection overruled.

A. \$52.00 a month.

Q. And will you answer the question with reference to the year 1929? [40]

A. \$52.00 a month.

Mr. Clasby: We, if the Court please, would like to have the record show an objection to all questions of this kind up to the year 1936.

The Court: Very well. The same ruling to the objections.

Q. For 1930?

A. 1930. At that time food prices were somewhat lower.

Mr. Clasby: We object to comments by the witness.

(Testimony of John LeRoy Haskins.)

Mr. Arend: Yes. You can just state——

A. (Interposing): \$47.00.

Q. 1931? A. \$47.00.

Q. 1932? A. \$47.00.

Q. 1933? A. \$47.00.

Q. 1934? A. \$47.00.

Q. 1935? A. \$47.00.

Q. 1936? A. \$50.00.

Q. 1937? A. \$50.00.

Q. 1938? [41] A. \$54.00.

Q. 1939? A. \$54.00.

Q. 1940? A. \$54.00.

Q. 1941? A. \$54.00.

Q. 1942?

Mr. Clasby: To October 13th.

A. \$54.00.

Mr. Arend: You may cross-examine.

Cross-Examination

By Mr. Clasby:

Q. You stated, Doctor, on your direct examination, if I recall properly, that you are a civil service employee. Is that correct?

A. That is correct.

Q. By whom is your salary paid?

A. United States Government, Department of the Interior.

Q. No part of it is paid by the Morningside Hospital? A. None.

Q. Or by the Sanitarium Company?

A. No.

(Testimony of John LeRoy Haskins.)

Q. I understand that during the years 1927 to 1942 there was a contractual arrangement between the United States Government [42] and the Sanitarium Company. Is that correct?

A. That's right. It is still a contract affair. The contract was renewed in——

Q. (Interposing): Well, what I am driving at, it is a contract with the Sanitarium Company?

A. Yes. It is a contract between the government and the Sanitarium Company.

Q. Is that a corporation? A. It is.

Q. A stock corporation?

A. It is a family affair. It was taken over by—it was originally owned by Dr. Coe. At the time of his death, it became part of the estate, and it was made a corporation at that time.

Q. Does that corporation own the properties known as the Morningside Hospital?

A. They do.

Q. Does it own any other properties?

A. Not that I know of, the company itself.

Q. And does the corporation have any arrangement with the hospital for the care of these insane persons?

A. Well, the Sanitarium Company owns the hospital.

Q. Does it operate it? A. It operates it.

Q. I see. It operates it.

A. The Sanitarium Company hires all of the employees and everyone [43] in connection with the institution except myself.

(Testimony of John LeRoy Haskins.)

Q. By the way, are you on the board of directors of the Sanitarium Company?

A. I am not.

Q. Are you a stockholder in the Sanitarium Company? A. I am not.

Q. I believe you said they had about seventy-five employees?

A. Yes. It varies some. It is sometimes more.

Q. Let's see. There was one doctor and two internes? A. Two internes. That's right.

Q. How many on the nursing staff?

A. You mean attendants and nurses?

Q. No. I mean just nurses for persons who are physically ill.

A. Anywhere from two to six or eight, depending on how many we can get.

Q. How many in your cooking or culinary department?

A. Oh, we have a chief—we have a cook, assistants—two assistants—and a baker. That is full time, and then we have relief for them.

Q. How many on what you call a guard staff?

A. We don't call them guards. Do you mean attendants?

Q. Attendants, yes.

A. On the attendant staff, we run about one to each eight patients; something like that.

Q. Then there would be about thirty-five or forty of those? [44]

A. Thirty-five or forty, yes.

(Testimony of John LeRoy Haskins.)

Q. Then what other permanent staff do you have?

A. Well, there is the mechanical staff and the herdsman taking care of the cattle.

Q. How many on the mechanical staff?

A. That varies, depending on whether we are having any new construction or not.

Q. No. I mean your permanent building maintenance staff.

A. The permanent building staff would be two or three—two.

Q. You spoke of a gardener or herdsman.

A. Yes, a herdsman, one man in charge of the cows, a herdsman.

Q. How many do you have in charge of your gardens?

A. That depends on the time of the year. In the wintertime there might be one gardener, and in the summertime there might be several.

Q. You have one on your permanent staff, though? A. Yes, one man as a gardner.

Q. I take it then there are a number of acres to the grounds?

A. Well, it is sixty acres or better.

Q. How many head of cattle do you maintain?

A. Well, I think we have around sixteen cows, I think at the present time. I mean I don't keep track of all they have.

Q. Enough for the wants of the sanitarium?

A. What?

(Testimony of John LeRoy Haskins.)

Q. Enough for the wants of the sanitarium?

A. Not always. They sometimes have to buy milk. Sometimes they don't. Sometimes they have enough; sometimes they have to buy it.

Q. Do you maintain a vegetable garden?

A. Yes.

Q. Do you raise grain for the cows?

A. No grain. We have pastures for the cows. We don't raise grain.

Q. Chickens?

A. No chickens. We have small orchards.

Q. Small orchards. And you have flower gardens and lawns and that kind of thing, I presume?

A. Yes.

Q. You spoke of there being a pretty high percentage of tuberculosis at the Sanitarium?

A. Yes. Well, that is, about thirty per cent of the native admissions—that is Alaska natives admitted—have either chronic or X-ray evidence of tuberculosis on admission.

Q. Are they segregated?

A. We have a male tuberculosis ward and female tuberculosis ward where they are segregated away from the others, yes.

Q. And who is the person that directly operates the hospital?

A. You mean coordinates the plan of operation of the thing?

Q. The one that is the supervisor of the whole thing, from the gardens on through to buildings and maintenance. [46]

A. Mr. Coe.

Q. Mr. Coe?

(Testimony of John LeRoy Haskins.)

A. Mr. Coe is the president of the Sanitarium Company. His office is there at the hospital.

Q. Now, are you familiar with the costs——

A. (Interposing): I am familiar with the——

Q. ——from 1936 to 1942 to the Sanitarium Company for keeping patients?

A. Not—Well, I am familiar with the cost of some years, certainly, the way they have been broken down and the other costs. The thing has been fairly well checked up, I think, by various sources.

Q. I mean are you familiar with them?

A. I have the determination in every year of the costs.

Q. Do those costs pass through your office and are they subjected to your scrutiny?

A. The costs of the Sanitarium Company—The Sanitarium Company is under contract to the government.

Q. I understand that.

A. My business is to see that they get what we believe is necessary for them.

Q. I understand that also from your testimony, Doctor, but my question is: Have you that familiarity with the corporation's records that you know what it cost them to maintain the patients? [47]

A. In some years I have, yes.

Q. What years?

A. I think the later, more recent years, '44 and '45 and some of the back years. I am not particu-

(Testimony of John LeRoy Haskins.)

larly interested in the costs of the Sanitarium Company——

Q. (Interposing): Listen, Doctor. If you will confine yourself to my questions, we would probably get at the point much quicker. Now, I take it you have no familiarity with the corporation records of the costs of caring for and maintaining patients in that hospital prior to the year 1942. Is that correct?

A. Except that I saw the reports from two or three years back.

Q. That is, I take it——

A. (Interposing): No, I beg your pardon. I saw the reports in '36, '37, and '38, as they were put on the Bureau of Census reports by the Sanitarium Company.

Q. That is the reports that the Company renders to whom?

A. Bureau of Census, for the patients in mental institutions, a pamphlet put out by the Department, in which they must show the cost of maintaining the patients during that time.

Q. What was the profit that showed during those years? A. I think about five per cent.

Q. Five per cent of what?

A. Five per cent of their——

Q. (Interposing): Investment? [48]

A. No. Five per cent—five per cent on their contract, not on their investment, because their investment there is—the company plant is a large investment; it wouldn't show that.

(Testimony of John LeRoy Haskins.)

Q. Then I take it, from what you said, the stockholders made a five per cent profit on the contract?

A. Some years. Some years. There were one or two years, I think, their report indicated they had lost money; that is before the contract was renewed.

Q. And your sole information in that regard is from reports by the Sanitarium Company to the Bureau of Census? A. Yes.

Q. You stated that you are familiar with George Gartner? A. Yes.

Q. And does the hospital staff keep a clinic record on each patient? A. Yes, very definitely.

Q. Was there one kept on George Gartner?

A. There was.

Q. Do you have that with you?

A. I haven't it with me, no.

Q. Are you familiar enough with it so that you can recall and testify about it? A. I can.

Q. From 1936 to 1942, generally, what was his mental condition?

A. He is a case of dementia praecox, and he has shown considerable [49] mental regression; that is, he is delusional, and, while he is in good contact and knows people and knows where he is, his age, and all those details, he is a delusional patient. A patient who has been in the hospital, now, for that length of time, from 1927, you do not expect very much improvement in that type of patient, over that length of period. If these patients recover, they recover within a year or fifteen months from when they go in.

(Testimony of John LeRoy Haskins.)

Q. Does the clinic record, from your memory, show any serious illness during the time he has been confined in the hospital?

A. He had a cardiac condition about five years ago.

Q. About five years ago?

A. About that, yes. He had a severe heart attack, and since that time he has been kept rather quiet. He was in bed for quite a while.

Q. Does the clinic record, to your memory, show anything prior to that in the nature of physical ailments?

A. There is nothing striking in his physical case, no.

Q. Is his mental condition, or was his mental condition, at any times you know of and as you gathered information of it from the clinical record, of a dangerous or anti-social character, insofar as handling him in the hospital is concerned?

A. He is rather sullen at times, rather argumentative, but not dangerous at the present.

Q. If duties were assigned him under proper supervision, he could perform them? [50]

A. Well, he has done nothing for the past five years or more, at least.

Q. Yes, of course. I am referring to prior to the heart attack.

A. Yes, prior to that he did some. He could go out and do some; he could be of some use.

Q. Since the time you have been in the hospital, has there been any policy of having those patients

(Testimony of John LeRoy Haskins.)

that are fit to perform duties around the garden and lawn and barns, and so forth, perform those duties?

Mr. Arend: We object to that question, your Honor. I don't know just what the purpose of the question is. The Doctor has testified that they were, that they are, employing occupational therapy for the patients' benefit, for the good of the patient himself.

Mr. Clasby: I object to an argument at this time to the jury.

The Court: Objection overruled. Do you want the question read, Doctor?

The Witness: Yes.

(The last question was read by the reporter.)

A. Yes. It is part of occupational therapy. If the patient is able to, they are better off outdoors getting exercise than they are in the wards, and they do a certain amount of work in the garden. A great many of them request almost immediately, when they come into the hospital, to get something to do. [51] "I want to get out; I want to get some exercise." And when they do that, they are better off doing something.

Q. Prior to having this attack four or five years ago, did Gartner busy himself in those activities a good deal of the time? A. Yes, he did some.

Q. Are you familiar to any extent with the extent of such occupations by him?

A. Since I have been there, he has had no regu-

(Testimony of John LeRoy Haskins.)

lar detail. He had been out with the garden squad part of the time. I believe the records show that at one time he had helped a little bit about the kitchen and sort of in the dining room; he did some work there, I think, at one time.

Q. I don't suppose it is a matter of policy to permit the patients that have tuberculosis to mingle with the others in performing such functions?

A. Tuberculosis patients are all in T.B. wards.

Q. And also, I would presume, those patients that it is difficult to trust, those whose delusions may lead to some violence, are also not permitted to mingle with the others in performing outdoor tasks?

A. You select your patients. You wouldn't trust a patient who would want to run away; we wouldn't put them outside. You certainly wouldn't trust a patient who would threaten violence with tools or anything. [52]

Q. These outside workers, are they supervised?

A. There is an attendant with those constantly.

Q. I believe you testified you maintained about one attendant for about every eight or ten patients?

A. That's right.

Q. What normally, would you say, is the percentage of patients in the hospital that mentally and physically are of such a nature that they can be permitted to perform functions in the dining room and outdoors in your garden and other parts of the premises?

(Testimony of John LeRoy Haskins.)

A. There are a great many patients who might be permitted to do that, but because of special types of therapy, we don't let them. People on shock therapy or occupational therapy on stabilization, we don't put them out to work. The policy is not to take a patient who is under particular treatment of any kind to put them outdoors.

Q. Yes, but on an average, what is your percentage?

A. Oh, I suppose probably fifteen, twenty per cent of the patients are employed in the hospital industry, perhaps less than that.

Q. Now, what special treatments are you familiar with, prior to the heart attack, that were given George Gartner?

A. Well, George had the——

Q. (Interrupting): I mean that you have personal knowledge of.

A. I don't have personal knowledge of all of it. I have seen the clinic record. The policy is when the patient comes into the [53] hospital, a folder is made of the man's case. The outline of the case is put on the front of it as special data on his birth, relatives, guardians, education, qualifications, and church; and in this folder will be his physical examination and Wassermann reports and things of that sort, and the physical will be written up; and starting from that will be the clinic notes; the clinic notes will cover the man's complete physical and will cover what history we have from the commitment papers, what difficulty he was in, and there will be a

(Testimony of John LeRoy Haskins.)

complete write-up of his mental condition at the time he was admitted to the hospital.

Q. I understand that.

A. But following that there will be current notes, which will perhaps cover during the man's first year after admission. There will be at least one full note a month. After that there will be——

Q. (Interposing): Now what do the notes on George Gartner show?

A. George's question was a question of stabilization. At that time shock treatment—we didn't have shock treatment when George came into the hospital, at the time George came in. At the time shock treatment came in George had been in the hospital eight or nine years.

Q. Tell us what treatment was given.

A. Psychiatry therapy. The psychiatrist in charge of the hospital at that time was trying to work out with George an [54] understanding of his difficulties.

Q. What years?

A. That would be '28 . . . '27, '28, '29, and '30 and until you pretty well made up your mind that the man is permanently ill. There was a Public Health officer at that time, a representative of the government who was the man for the United States Public Health Service——

Q. (Interposing): Do you recall the year that the notes show the psychiatrist in charge had a fixed opinion as to Gartner?

A. No, I don't remember that. The notes were

(Testimony of John LeRoy Haskins.)

carried on, continuous notes, at the time I came there, I know, and still are, and he made up his mind probably that the man's delusions were well-fixed probably after a year or so.

Q. And after that it was merely a matter of interview?

A. Interviews to see if there was any change in his mental condition, to see if there was any improvement or any indication that he was rapidly getting worse or any indications for other treatment.

Q. The same sort of observation that your staff, Doctor, would accord the physical condition of the patient?

A. Yes.

Q. Did the Sanitarium corporation try and keep any separate account on individual patients or would they just bulk all of them?

A. They just bulk them. You get one patient who might need a lot [55] of hospitalization and need infirmary nursing all of the time; another patient might need little. You got to bulk them that way.

Q. Now, Doctor, you stated that, in your opinion, the cost of caring for a patient in Morningside Hospital—the reasonable cost of caring for George Gartner in the Morningside Hospital for the year 1927 to January, 1930, was \$52.00 a month?

A. That's right.

Q. On what do you base that?

A. Well, I base it on reports which we have from the United States Public Health Service and

(Testimony of John LeRoy Haskins.)

the physician who was on duty at the institution at that time.

Q. What did he base it on?

A. He based it on what he believed to be adequate care of the patient. They were getting adequate care, and an investigation had shown that that was about equivalent with the care in other hospitals of the same type.

Q. You, at that time, had no knowledge of the care that was given to George Gartner?

A. I am going on his notes, his clinic records, and his observations which are in the hospital now, and his reports to the Department covering those periods.

Q. Well, aren't you largely going on the contract price?

A. If the contract price was a fair—If the contract price was a fair price, and it was, that was the adequate care. [56]

Q. If I recall your testimony properly, Doctor, your testimony coincides exactly with the contract price? A. Well—

Q. Isn't that correct?

A. Yes, we believe that—

Q. (Interposing): Now, wait a minute. And that your testimony as to when the reasonable value of the services rendered George Gartner varied, why the contract varied too? A. Yes.

Q. Now I ask you, isn't your testimony based entirely upon the contract price?

A. What else would it be based on?

(Testimony of John LeRoy Haskins.)

Mr. Clasby: Well, on that basis, if the Court please, we move that this testimony be stricken for the reason that he has admitted it is based on the contract price. There has been no contract introduced in evidence, or any effort made to show what the contract price was, and, of course, we have had no opportunity to address our objection to the introduction of evidence as to a contract price; and, if I may be permitted to argue the relevancy of the contract price at this time, I would like to do so and suggest that it would probably be wise to do so in the absence of the jury.

The Court: We will take that up at two o'clock. It is almost noon now.

Mr. Clasby: If the Court please, I have three [57] instructions I am going to request and, for the convenience of the court and counsel, I will serve them at this time on the government and leave them with the court. There might be some question about that that could be decided at the same time, and I suggest that the jury come back at two-thirty. We could be through with both phases of it.

The Court: We will take an adjournment in a few moments, ladies and gentlemen of the jury, at which time you will be excused until two-thirty. Now the court is going to convene at two o'clock, but you don't have to return until two-thirty. In the meantime remember, don't talk about the case among yourselves or with anybody else until the case is finally submitted to you. The court will be at recess until two o'clock.

(The court duly reconvened at two o'clock P. M., November 20, 1946, and the following proceedings took place:)

The Court: Are you ready to proceed with the argument of your motion?

Mr. Clasby: Yes, if the Court please, but before making the argument on my motion I would like to have the record show that, in submitting requested instruction number three for the convenience of counsel and the court, we did so without waiving any objection that we might have to the admission of the contract price in evidence.

The Court: That is your right any way.

(Whereupon argument was presented by counsel for the defendant and counsel for the plaintiff.) [58]

The Court: I am going to deny the motion. You may put your witness back on the stand and you may clarify what he meant, if he really meant basing his opinion entirely upon that contract.

Mr. Arend: Yes, your Honor.

Mr. Clasby: May I ask, does the Court's ruling embrace the admission of the contract price in evidence?

The Court: Yes.

Mr. Clasby: Then we can consider the stipulation as a part of the evidence?

Mr. Arend: Yes, your Honor, we were going to introduce it and ask to read it to the jury.

The Court: You had better introduce that when the jury is back.

Mr. Clasby: If the Court please, as long as we have twenty minutes at the present time, we might as well utilize it, if the Court doesn't mind taking a matter up out of order. Has the Court had an opportunity to read the requested instructions?

The Court: Yes.

Mr. Clasby: Well, there is a point of defense there that we would like to present and present testimony on, and it would probably be subjected to objection by the United States Attorney and require argument at that time, and, if the Court would care to hear the argument out of order, why we might as well present that. [59]

The Court: Just explain yourself. You have some point that will be brought out later?

Mr. Clasby: We will, first, at the close of plaintiff's case move for a non-suit on the grounds that they haven't in their case established that there have been profits occurring from the estate of Gartner; and, when we put on our defense, we will seek to introduce evidence showing what property Gartner had and the income, if any, there was from that property, and that will be introduced on the theory that the common law—we will seek to introduce it on the theory that the common law provides only for the use of profits derived from an estate.

The Court: You have authorities on that, have you?

Mr. Clasby: Nothing other than the expressions in cases that I can find that indicate what the common law might be.

The Court: I will hear your authorities if you have them.

(Whereupon argument was presented by counsel for the defendant and counsel for the plaintiff.)

The Court: Call the jury.

(Thereupon the jury was called into the courtroom and each juror answered to his or her name, and the following proceedings took place.)

The Court: Are counsel ready to proceed with the trial of this case?

Mr. Clasby: We are, your Honor. [60]

Mr. Arend: Ready.

The Court: Very well. I have overruled the motion of the counsel for the defense. Do you have further cross-examination?

Mr. Clasby: Oh, yes.

JOHN LEROY HASKINS

having been previously sworn, resumed the witness stand for further examination and testified as follows:

Further Cross Examination

By Mr. Clasby:

Q. Doctor, you testified that the government had contracts at various times with the Sanitarium corporation? A. I did.

Q. Within your knowledge, how long has the government had contracts with that organization?

A. Since 1904, I believe.

(Testimony of John LeRoy Haskins.)

Q. Has there been any gap any year, or has that been continuous?

A. Well, it must have been continuous, because there was patients in the hospital that had been there since 1904.

Q. I see. Did you, in your direct examination, testify that the government let that out on bid?

A. It is according to the law. It specifies that it shall be bids, open bids, and the bids must be from an institution west [61] of the main chain of the Rocky Mountains. Any hospital west of the Rocky Mountains may bid on these contracts, and the notification of preparation of bids is published at a time previous to the expiration of the contract and hospitals may bid.

Q. Are there other such hospitals west of the Rockies?

A. Well, this hospital has had the contract continuously since that time, and there have been other bids, I believe, but this hospital has had the contract.

Q. Are there other hospitals west of the Rocky Mountains of the sanitarium character?

A. There are no other good hospitals.

Q. I mean hospitals that could qualify?

A. Yes, there are.

Q. How many?

A. There are no other private institutions that could qualify at the present time. At this time the only thing that could be done would be a state hospital asking for the bid.

(Testimony of John LeRoy Haskins.)

Q. Would the bid of a state hospital, if it was lower, be accepted?

A. If it was reasonable and could guarantee reasonable care, it would have the possibility of being accepted.

Q. Is it the low bid that governs?

A. No, it wouldn't necessarily be the low bid that governs. You would necessarily consider the type of plant they had and the [62] type of care that they could offer.

Q. In the ten years that you have been there, do you know of any particular institution that has bid?

A. I think in 1936—wait a minute—what was that which—in 1936, just before I went there, there was some institution had bid, I believe, some institution in Washington. A private or semi-private institution had bid. I don't know the name of it. Those contracts are let from Washington, D. C. Of course, I don't have anything to do with letting the contract.

Q. Well, do you have knowledge of any other institution having bid since 1935 or 1936?

A. I didn't see any bids, no.

Q. Well, has any information come to you that any others have bid?

A. I have a vague remembrance that in the contract of '38 there was some other bid, but I don't know where it was from. I know no details of the bid.

Q. Are these contracts let each year?

A. No, they are let sometimes—the contract

(Testimony of John LeRoy Haskins.)

in 1930 was evidently a five-year contract; in 1936 and '37 a one year; and then, I think, there was a five-year contract after that.

Q. Do you think that there is any state hospital that the government would let a contract with west of the Rockies that could qualify? [63]

A. Well, if some of them would improve their facilities and improve their number of attendants and some of their other facilities, they might qualify but there would have to be considerable improvement.

Mr. Clasby: I think that is all.

Redirect Examination

By Mr. Arend:

Q. Dr. Haskins, on cross-examination you stated that you considered the government contract with the Sanitarium Company in forming your opinion as to the reasonable cost of the care and maintenance of George Gartner during the years 1927 to 1942. Will you explain that to us? Is that all you considered?

A. Well, no. I saw, a number of years, the expense account and complete return of the Sanitarium Company, as I previously stated, which they had made. These show their actual cost of food, their actual cost of wages and clothing and of heat and light and all those things, and then actually what they had expended. Then we also must consider what other institutions of similar type were spending for care of patients. These other institu-

(Testimony of John LeRoy Haskins.)

tions were not contract institutions; they were institutions that were operating on actual cost, perhaps with a budget; that is, that their budget allowed them to take care of the patients adequately—and other institutions giving adequate, similar adequate care, what their expenses were during that same period. That, I think, should be the basis. [64] That is, if you had two hospitals, each giving good care, you know the actual cost. Now, for instance, Saint Elizabeth's which has actual cost per patient there——

Q. (Interposing): You have testified that you have compared Saint Elizabeth's for several years from 1927 to the present? A. I have.

Q. With the cost of Morningside?

A. Yes, sir.

Q. What did you find in that comparison?

A. I find that the maintenance cost and total cost, for instance, in 1927——

Mr. Clasby (Interposing): We, of course, object to this line of testimony on the grounds that it doesn't have a tendency to establish the value of the services rendered George Gartner.

The Court: Well, he stated that he considered all of that in arriving at what was a reasonable price. I think the objection is good. It will be sustained.

Q. (By Mr. Arend): Are the bids submitted to you that are received for the government?

A. The last two have been. That is, the last two

(Testimony of John LeRoy Haskins.)

I have gone over in consideration of whether there was a difference——

Q. (Interposing): Well, I had better find out which years those were to see if it is relevant.

A. That was in '37—Wait a minute, '38 and in '42. [65]

Q. The 1942 did not go into effect until 1943?

A. 1943, yes.

Q. And for what purpose was the bid submitted to you?

A. Well, the question of whether I believed the bid offered by the Sanitarium Company was a reasonable bid, whether it was too high.

Q. What did you determine in that case?

A. In that case we decided it was too high.

Q. Was it lowered after your determination?

A. It was lowered, yes.

Mr. Arend: No further questions.

Recross Examination

By Mr. Clasby:

Q. I would like to ask the Doctor a few more questions. Doctor, your opinion is the average cost per patient per month?

A. That is the only way you can arrive at it in institution care.

Q. Now, if during these years, the entire group of patients at Morningside had been tubercular, the cost per patient would have been higher, wouldn't it?

A. Well, what I meant by thirty per cent of the

(Testimony of John LeRoy Haskins.)

patients had evidence of tuberculosis didn't necessarily mean that thirty per cent of these patients was active tuberculosis; that is, out of our present population we have at the present time less than twenty patients in bed.

Q. All right. If all of your patients were tubercular, the costs [66] would be higher?

A. Yes.

Q. And if all of the patients required medical attention for physical disabilities, your costs would be higher?

A. If they were in bed in a nursing ward.

Q. And if all of your patients were capable of doing farm work and other labor, your costs would be lower, isn't that correct?

A. Somewhat, yes.

Q. Well, Doctor, they would be appreciably lower, wouldn't they?

A. You are not going to decrease your number of attendants a great deal; you are not going to decrease your recreational facilities; you are not going to decrease your food costs; you are not going to decrease your heat and light.

Q. Just on that one point, why wouldn't you decrease your food costs?

A. Because your patients need to eat more if they are up and about.

Q. Couldn't they raise their own food?

A. They can help.

Q. It is a farming and dairy community?

A. They can help.

(Testimony of John LeRoy Haskins.)

Q. In fact, they could produce enough produce to sell if they were all healthy and able to work, couldn't they?

A. If you are talking about the patient being able to work, he may be physically able to, but, because an individual is [67] physically able to work in that hospital doesn't mean that he will work. Sometimes they object to working because of their delusions, and he may have objections to working.

Q. Did George Gartner have any objections to work? A. At times.

Q. For how extended a period?

A. There was a period when he first went in, I remember from the notes, that he was quite restive. Of course, during the past five years, he hasn't done anything.

Q. But during fifteen years of the twenty years, at least, he was——

A. (Interposing): No, not fifteen years. There was considerable time during his early residence when he was rather restive and didn't do anything.

Q. But if all of the patients had been exactly like George Gartner, don't you think the costs would have been a great deal less? I want your fair opinion.

A. Are you figuring the mental condition or physical?

Q. Both the mental condition and the physical condition. If they were just exactly like George Gartner, if you had three hundred patients like George Gartner.

(Testimony of John LeRoy Haskins.)

A. For the past five years, it would be twice what it is now.

Q. Twice as much as it is now?

A. It might be. It would be higher, because he does nothing.

Q. What? [68]

A. He is doing nothing now.

Q. You don't mean that, Doctor, supposing that, presuming that in the period of 1927 to 1942 your hospital had patients identically like George Gartner was during the period of 1927 to 1942, requiring the attention George Gartner required during those years, capable of performing the services for the same period that George Gartner performed during those years, that the costs would be as high?

A. You would need exactly the same number of physicians that you have now.

Q. Well, he didn't require any physical care, you said, until he had this cardiac failure?

A. Wait a minute. We were talking about psychiatric care.

Q. You are the psychiatrist, are you not?

A. This other hospital man is interested in the psychiatric examinations, and he acts frequently as a psychiatrist as well.

Q. I misunderstood. I thought you took care of the psychiatry.

A. I do the major part of it, yes, but you would need the same number of doctors you have there now, because you have to keep the same check on the patients that are up. You want to know what he is doing, what he is thinking about. You would

(Testimony of John LeRoy Haskins.)

have the same number of occupational therapists——

Q. (Interposing): George Gartner never needed an occupational therapist, did he?

A. We had never been able to get him to go to the occupational [69] therapy shop. I don't think the cost would have been a great deal less than it has been.

Q. But it would be less?

A. It might be.

Mr. Clasby: I have no other questions.

Mr. Arend: If the Court please, at this time we ask permission to read the stipulation to the jury.

The Court: Very well.

Mr. Clasby: We object to the stipulation being admitted in evidence upon the grounds and for the reason that the contract price as therein stipulated is not proper evidence to be submitted in a proceeding of this kind and has no tendency to prove any of the issues.

The Court: Objection overruled. You may mark that as an exhibit, Mr. Clerk.

(Whereupon "Agreed Statement of Facts and Stipulation" was marked as Plaintiff's Exhibit A by the clerk of the court. Said Stipulation was read by Mr. Berrett and is in words and figures as follows:)

“In the District Court for the Territory of Alaska
Fourth Judicial Division

“No. 5368

“UNITED STATES OF AMERICA,

Plaintiff.

vs.

“GEORGE GARTNER, an Insane Person, and
MIKE ERCEG, Guardian of the Estate of
George Gartner, an Insane Person,

Defendants.

“AGREED STATEMENT OF FACTS AND
STIPULATION

“The above named plaintiff and the defendants, acting by and through their respective undersigned attorneys, hereby stipulate and agree that, if witnesses were called and examined on the question of expenditures made by the plaintiff for the care and maintenance of the said defendant, George Gartner, an insane person, at Morningside Hospital, at Portland, Oregon, the following facts would be established by the testimony, to-wit:

I.

“That under the provisions of the Act of Congress of February 6, 1909, (35 Stat. 601, 48 U.S.C. 46), and prior to the admission of the said George Gartner to the said hospital on August 10, 1927, there was in effect between the Department of Interior of the United States of America and the

Sanitarium Company, an Oregon corporation, which Company during all of the times hereinafter mentioned operated said Morningside Hospital, a contract dated December 14, 1923, and bearing the number No. I Sec-1/2, providing for the care, custody, medical treatment and maintenance, during a period of five years from and including January 16, 1925, at a rate of \$52 per patient, per month, of such residents of Alaska as legally were adjudged insane and committed to the said hospital, and that the Department of the Interior and the said company entered into other similar contracts, bearing the dates and numbers and for [71] the periods and at the rates per patient, per month, as follows: April 3, 1929 (No. I Sec-35), five years from and including January 16, 1930, at \$47; May 22, 1934 (No. I Sec. 143), one year from and including January 16, 1935, at \$47; June 8, 1935 (No. I Sec-168), one year from and including January 16, 1936, at \$50; July 17, 1936 (No. I Sec-188), one year from and including January 16, 1937, at \$50; June 5, 1937 (No. I Sec-207) for the period beginning January 16, 1938, and ending June 30, 1943—unless sooner terminated, as therein provided—at \$54.

II.

That between the 10th day of August, 1927, and the 13th day of October, 1942, both dates inclusive, the said George Gartner, an insane person, was kept and maintained continuously in said hospital under said contracts; and that during said period last mentioned the plaintiff expended from the public funds and paid to said Morningside Hospital, under the

said contracts, the total sum of Nine Thousand One Hundred Eighty and 11/100 Dollars (\$9,180.11) for the care and maintenance of the said George Gartner at said hospital, said payments being itemized as follows:

8/10/27 to 1/15/30 @ \$52.00 per month....	\$1,518.90
1/16/30 to 1/15/35 @ \$47.00 per month....	2,820.76
1/16/35 to 1/15/36 @ \$47.00 per month....	563.24
1/16/36 to 1/15/37 @ \$50.00 per month....	600.81
1/16/38 to 10/13/42 @ \$54.00 per month..	3,075.27

“III.

“It is especially agreed by the parties to this action that nothing in this stipulation contained shall be taken as establishing the reasonable cost of the care and maintenance of the said George Gartner at said hospital during the period stated or as establishing the fact that the defendant, George Gartner, is indebted to the plaintiff in the said sum of \$9,180.11, or any other sum; and both parties reserve the right to produce at the trial of this cause whatever testimony they, or either of them, may see fit concerning such reasonable cost and/or indebtedness as aforesaid.

“Dated at Fairbanks, Alaska, this 10th day of September, 1946.

/s/ HARRY O. AREND,

United States Attorney.

JOHN MCGINN,

COLLINS & CLASBY,

By CHAS. J. CLASBY,

All Attorneys for the

Defendants.”

Mr. Arend: The United States rests, your Honor.

(A short recess was declared, after which the court was duly reconvened.)

The Court: Will counsel stipulate that all members of the jury are present?

Mr. Clasby: We so stipulate.

Mr. Arend: We so stipulate. [73]

Mr. Clasby: At this time, if the Court please, we would like to move the entry of a non-suit upon the grounds and for the reason that the government has failed to establish the right to recover under the common law in that their evidence does not show that there have been any profits from the property belonging to the estate of George Gartner, an insane person, against which the charges of his care and maintenance can be assessed.

The Court: The motion will be denied.

MIKE ERCEG

called as a witness on behalf of the defendants, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Clasby:

Q. Would you state your name, please?

A. Mike Erceg.

Q. Are you a resident of Fairbanks?

A. Yes, sir.

Q. How long have you been here, Mr. Erceg?

A. About forty years.

(Testimony of Mike Erceg.)

Q. Are you now the duly appointed, qualified, and acting guardian of the estate of George Gartner, an insane person? A. Yes.

Q. How long have you held that trust?

A. How long I know George Gartner?

Q. How long have you been his guardian?

A. Since 1927.

Q. Did you know George Gartner before that?

A. Yes, sir.

Q. How long before that?

A. Three years before that.

Q. How old would you say George Gartner was when he was committed as an insane person? [75]

A. How old he is?

Q. Then. A. I think he was born in 1887.

Q. He was about forty years old in 1927?

A. Yes.

Q. Had he worked for you? A. Yes, sir.

Q. How long had he worked for you?

A. He worked for me two seasons.

Q. Doing what kind of work?

A. Firing boiler on a drill, working on a drill.

Q. What was his physical condition at the time he was working for you?

A. It was pretty good.

Q. Did you see him at the time he was committed to the Sanitarium? A. Yes, sir.

Q. What was his physical condition?

A. Physically he was pretty good.

Q. Was he a husky man?

(Testimony of Mike Erceg.)

Mr. Arend: If the Court please, now we object to any further questions regarding the physical condition of the defendant. This witness is not even qualified to testify regarding his physical condition.

The Court: Objection sustained.

Q. Mr. Erceg, have you seen George Gartner since he was committed? [76] A. Yes.

Q. When? A. 1932.

Q. Have you seen him since then?

A. Yes.

Q. When? A. 1939.

Q. Where was he when you saw him in 1932?

A. I see him in Morningside Sanitarium.

Q. Near Portland?

A. Portland, Oregon, Yes.

Q. Was he confined there as a patient then?

A. He was a patient there, yes.

Q. Did you go out there to visit him, out to the Sanitarium to visit him?

A. Did I visit him?

Q. Yes. A. Yes.

Q. Do you remember what month that was in 1932? A. Physically—

Q. (Interposing): I said, do you remember what month that was in 1932?

A. Yes, it was April.

Q. Did you see George Gartner at that time?

A. Did I see him? [77]

Q. Yes. A. Yes.

Q. Did you talk to him? A. Yes.

(Testimony of Mike Erceg.)

Q. Did you observe him working?

A. Yes.

Q. What was he doing?

A. Well, he was working on the farm probably four or five hundred feet from the main hospital, he and eleven other men.

Q. Did you happen to know any other persons that were in that group from Alaska?

A. Yes.

Q. Who did you know?

A. George Kordich from Goldstream Creek.

Q. Anyone else?

A. Yes, fellow by name of Meyer from Deadwood Creek up here.

Q. How long were you at that institution in that visit? A. How long I was there?

Q. Yes.

A. I didn't look at the time. Mr. Tom Youle, he take me there. We was there between two and three hours.

Q. Did you meet the doctor that was in charge?

A. Yes. I went first to see doctor, yes.

Q. Who was that? What was his name?

A. His name was Dr. Locke—something like that. [78]

Q. Did you ask to see George Gartner and talk with him?

A. Well, I called guard there, big, skookum man, just as big as that doctor over there, and he said—

Mr. Arend: We object to hearsay testimony, your Honor.

(Testimony of Mike Erceg.)

The Court: Objection sustained.

Q. Did the doctor permit you to talk with George Gartner?

A. Yes, I talked to George Gartner, yes.

Q. Where were you when you talked with George Gartner?

A. I saw George Gartner right in the yard, and he come inside of the house beside the doctor's office.

Q. Beside the doctor's office inside the building?

A. Yes.

Q. Did you ask him what he was doing?

A. Yes.

Mr. Arend: We object to that unless it is shown that the plaintiff or one of its agents was there during the conversation.

The Court: Objection sustained. The pleadings admit that he was an insane person all during that time and confined there. I can't see the relevancy at this time.

Mr. Clasby: Well, supposing that I make my offer of proof, and then the court can rule on it and avoid ruling on a series of questions.

The Court: All right.

(The following offer was made out of the hearing of the jury:) [79]

Mr. Clasby: We offer to prove by this witness—and for that purpose I will condense the testimony—that he visited the Sanitarium on two different occasions: once in 1932 and once in 1939; that on each of those occasions he observed George Gartner

(Testimony of Mike Erceg.)

working; that on each of those occasions he talked with George Gartner; that on each of those occasions he inquired of George Gartner what he had been doing and that on the first of those occasions he was told by George Gartner that he had been working on the farm; that on the second of those occasions, in 1939, he was told by George Gartner that he was working in the kitchen; that on each of those occasions he told Mike Erceg that he was working from four to six hours a day and that he was receiving no pay for that work. The witness will further testify that on each of those occasions, that is to say, 1932 and 1939, he observed the physical condition of George Gartner and that George Gartner was healthy and was apparently capable of performing physical labor.

The Court: That is the offer?

Mr. Clasby: That is the offer.

Mr. Arend: Well, your Honor, we object to conversations with an insane person. There is no showing either that——

The Court (Interposing): Now, what is your objection to his offer?

Mr. Arend: We object to all of the testimony that has been offered. [80]

The Court: On what ground?

Mr. Arend: On the ground that it is irrelevant, immaterial and also incompetent.

The Court: Objection sustained.

Mr. Clasby: For the purpose of the record, counsel for the defendants would like to state that

(Testimony of Mike Erceg.)

the offer of proof is made for the purpose of demonstrating that George Gartner had ability to and did perform services for the asylum that are in mitigation of the reasonable value of services rendered by the government to George Gartner, and that was the purpose of the testimony offered.

(The following proceedings were had in the presence of the jury:)

Q. Mr. Erceg, would you tell us what property George Gartner had when you assumed control of his estate?

Mr. Arend: If the Court please, we object to this testimony as irrelevant and immaterial. Whether or not he had property is not relevant and material to the issues in this case.

The Court: Objection sustained.

Q. Does George Gartner's estate now have any assets that represent income from the property that you have administered in this estate?

A. No.

Mr. Arend: We object to that question on the same [81] grounds as the preceding question.

The Court: Objection sustained.

Mr. Clasby: And in that connection, if the Court please, we would like again to make an offer of proof.

(The following offer of proof was made out of the presence of the jury:)

Mr. Clasby: We offer to prove by this witness, if he were permitted to testify, that the only assets

(Testimony of Mike Erceg.)

belonging to the estate of George Gartner, an insane person, at the time he was committed to the Sanitarium were three unpatented mining claims, situate on Goldstream, with a small cabin thereon, and that the said George Gartner had no personal property. We further offer to prove that said George Gartner was at that time heavily indebted and that this witness paid out of his own personal funds all of the indebtedness of George Gartner, so as to prevent said mining claims from being sold; that this witness, out of his own personal funds, advanced the money necessary to do the annual labor work on said mining claims and to preserve said estate, and that said properties were, during that time and for some years after his appointment as guardian, being encroached upon by the United States Smelting, Refining and Mining Company, through their dumping of debris upon said lands, and that said lands were in no condition to be mortgaged for the production of revenue or to be mined for the production of [82] profit. We further would prove by this witness, if he were permitted to answer, that an action was filed against said mining company which resulted in a judgment of this court against said mining company in the value of the mining claims, it having been determined that the cost of removing the overburden was greater than the value of the mining claims. We further offer to prove by this witness that at that time this witness had advanced over \$10,000.00 from his personal funds for the preservation of the estate. We further offer to

(Testimony of Mike Erceg.)

prove by this witness, if he were permitted to answer, that when all the expenses were paid, following the litigation, there remains in the bank a balance of approximately \$9,000.00, and that of the sum of \$9,000.00 there now remains in the hands of this guardian approximately \$7,000.00, representing the value of the land alone and not income therefrom. We further offer to prove by this witness that the mining claims are now valueless so far as the possibility of conducting mining operations thereon, and that said claims cannot be mortgaged for the production of revenue by reason of overburden existing thereon. We offer to prove by this witness that here has been no profits over and above the necessary expenses of preserving the property of this estate during the time that it has been administered by the guardian.

Mr. Arend: We object to all of the testimony as irrelevant and immaterial under the issues of this case. [83]

The Court: Objection sustained.

Mr. Clasby: I have no other questions.

Mr. Arend: No cross-examination.

(Witness excused.)

CECIL H. CLEGG,

called as a witness on behalf of the defendants, having been duly sworn by the clerk of the court, was examined and testified as follows:

(Testimony of Cecil H. Clegg.)

Direct Examination

By Mr. Clasby:

Q. Would you state your name, please?

A. Cecil H. Clegg.

Q. Are you a member of the bar in Alaska?

A. Yes, sir.

Q. How long have you been a member of the bar in Alaska? A. Since 1900.

Q. Have you practiced continuously since 1900, except for the years you were on the bench as a judge?

A. Well, yes. I was out of the practice for a while down in the Bristol Bay country in the year 1902. There was no practice down there.

Q. Have you practiced in the Second Division for Alaska? A. Yes, two years.

Q. And in the Third Division? [84]

[No answer in copy.]

Q. And in the First?

A. Yes, several years.

Q. And in the Fourth?

A. I have been in the Fourth Division practically since 1907.

Q. During what years was it that you were district judge of this court?

A. Well, that was from 1921 to 1942, I think it was.

Q. 1942? A. Yes, but that can't be right.

Q. What?

A. I say, that cannot be right. It wasn't that long. It must have been for a period of about twelve

(Testimony of Cecil H. Clegg.)

years, twelve and a half years, between 1921 and 1933.

Q. During the time that you have been admitted to the bar in Alaska, have you been familiar with the statutes and the procedure for commission of persons that are insane?

A. Yes, as much as any lawyer who is engaged in general practice.

Q. And to the like extent, have you been familiar with the practices of the government in paying for and maintaining their insane patients at Morningside Hospital?

A. Yes. I have come in contact with that sort of work considerably.

Q. And in your experience do you know personally, or have you ever heard of any law suit or claim having been made by the federal government for recompense from the estate of insane [85] persons of the cost of the care and maintenance of those persons in Morningside prior to the year 1942?

Mr. Arend: If the Court please, we object to the question as irrelevant, incompetent, immaterial, and not in issue in this case.

The Court: Objection sustained.

Mr. Clasby: I think that is all.

The Court: Any cross-examination?

Mr. Arend: No cross-examination.

Mr. Clasby: There is one other phase I would like to make by an offer of proof rather than by

direct question, because I don't want to present it before the jury.

(The following offer was made out of the presence of the jury:)

Mr. Clasby: In addition to the answer "no" to the question that has been asked, we offer to prove by this witness, if he were permitted to answer, that it was the general understanding among the bench and the bar of Alaska, from the year 1900 to 1942, insofar as this witness is acquainted with it, that the payments made by the government for the care and maintenance of insane persons were made as a gratuity and without any policy or expectation of recovering or recouping those expenses.

Mr. Arend: We object to the question as incompetent, irrelevant, and immaterial and not binding upon the government. [86]

The Court: Objection sustained.

Mr. Clasby: The defense rests.

Mr. Arend: The government rests.

Mr. Clasby: Might it be possible for us to see the instructions before we start argument?

Mr. Arend: I would like that privilege, your Honor, if it doesn't take too long.

The Court: Well, you are not making a motion for a directed verdict?

Mr. Arend: Well, your Honor, we move the Court for a directed verdict in this case, directing the jury to bring in a verdict in line with the values established by the government's witness, Dr. Haskins, on the grounds that it was the only evidence of value introduced in this case, evidence of the

reasonable value of the care and maintenance of George Gartner at Morningside Hospital from August 10, 1927, to October 13, 1942, both dates inclusive.

Mr. Clasby: May it please the Court, when someone is looking at you with a shotgun, there isn't a great deal you can say. It appears to us, however, that there is what might, in some legal circles, be called a scintilla of evidence that could be seized upon as a reason for carrying the case to the jury, and that is the doctor's statement that so far as George Gartner's care was concerned, if all patients were like him, it might have been possible that the cost would have been a [87] little less. Our bewilderment at being sued some twenty years later can be understood and our inability to disprove the government's figures, going so far back in history, can likewise be readily understood. We have offered what we think is a question for the jury, and that is that this man was not a patient that required a great deal of care and attention and that he could perform services, and the evidence shows that the price testified to is a per capita average cost, and we believe this jury is entitled to, under the evidence and the law, have submitted to them the question of whether or not that price is what the value of these particular services rendered to George Gartner was; and on that theory we resist counsel's motion for a directed verdict.

The Court: The motion is granted. Ladies and gentlemen of the jury, you are instructed that the evidence in this case, under the law governing it,

shows that the plaintiff is entitled to a judgment as prayed for in the complaint. You are, therefore, instructed to bring in a verdict in favor of the plaintiff in the sum of \$9180.00. I will appoint Mr. Green foreman of the jury to sign the verdict.

(Thereupon the jury rendered its verdict according to the instructions of the Court.)

The Court: The verdict may be read.

(The verdict was read by the clerk of the court.)

The Court: The verdict may be filed. The jury is excused. [88]

Mr. Clasby: Could the record show an exception on behalf of the defendants to the granting of said motion?

The Court: Very well. [89]

(The following instructions were requested by the defendants:)

“In the District Court for the Territory of Alaska
Fourth Division

“UNITED STATES OF AMERICA, Plaintiff,

vs.

“GEORGE GARTNER, an Insane Person, and
MIKE ERCEG, Guardian of the Estate of
George Gartner, an Insane Person,
Defendants.

“No. 5368. Plaintiff’s Requested Instruction No. 1.

“You are instructed that according to the Com-

mon Law, the sovereign has the duty of caring for and preserving the estate of insane persons and the privilege of using the profits therefrom for the care and maintenance of the insane person and his family. You are further instructed that the sovereign has provided for the preservation and care of the estate of an insane person by the appointment in its Courts of a guardian for that purpose.

You are instructed therefor that before you may return a verdict for the plaintiff in this cause, you must first find:

- a. That George Gartner had property;
- b. That the property or estate of George Gartner has produced a revenue over and above the cost of caring and [90] preserving the property; and
- c. That there exists profits from the property in the Estate of George Gartner, which can be devoted to his care and maintenance.

“You are further instructed that upon finding conditions existing as specified in a, b and c above, that you may then, by your verdict, charge the Estate of George Gartner, an insane person, with the reasonable value of his care and maintenance as is elsewhere in these instructions defined, in no greater total amount, however, than the total profits of said Estate, derived from the property of the Estate of George Gartner. [91]

“In the District Court for the Territory of Alaska
Fourth Division

“UNITED STATES OF AMERICA, Plaintiff,

vs.

“GEORGE GARTNER, an Insane Person, and
MIKE ERCEG, Guardian of the Estate of
George Gartner, an Insane Person,
Defendants.

“No. 5368. Plaintiff’s Requested Instruction No. 2.

“You are instructed that according to the Common Law in effect in the Territory of Alaska during the period involved in the Complaint in this action, estates of insane persons were liable for the reasonable value of services for the care and maintenance of the insane ward furnished to him.

“You are instructed that in determining the reasonable value of the services for care and maintenance furnished to the insane person, George Gartner, you shall take into account the following:

“a. The mental and physical condition of George Gartner and the amount of care and maintenance necessary for his condition;

“b. The type, character, and amount of services rendered to George Gartner by the Morningside Hospital for the maintenance of George Gartner; the type, character and amount of medical and other care supplied by the Morningside Hospital for [92] the care of George Gartner; and

“c. The type, character and amount of work and labor performed by said George Gartner for said Morningside Hospital and the extent to which said services offset the cost to the Morningside Hospital of maintaining and caring for George Gartner in whole or in part; and

“d. An allowance to said Morningside Hospital on account of the care and maintenance rendered to George Gartner of a reasonable profit only for the performance of such service.

“You shall likewise take into consideration the fact that the reasonable value of the service performed for George Gartner necessarily varied from year to year in accordance with the cost of securing the necessary supplies and services for performing the function of caring and maintaining George Gartner in said Morningside Hospital.” [93]

“In the District Court for the Territory of Alaska
Fourth Division

“UNITED STATES OF AMERICA, Plaintiff,

vs.

“GEORGE GARTNER, an Insane Person, and
MIKE ERCEG, Guardian of the Estate of
George Gartner, an Insane Person,

Defendants.

“No. 5368. Plaintiff’s Requested Instruction No. 3.

“The Court in this Cause has admitted into evi-

dence the per capita cost to the Plaintiff each year, during each of the years involved in Plaintiff's Complaint, for the care and maintenance of a patient at the Morningside Hospital.

“You are instructed that said amount is not to be taken by yourselves as conclusive, and is not binding upon the Defendant, George Gartner, for the reason that the same does not show the reasonable value of the services rendered to George Gartner but merely the cost to the Government based on an average, for the maintenance of a patient at said hospital. You may, however, consider said per capita price in connection with all of the other evidence in this case in determining the reasonable value of the services for care and maintenance rendered to the insane person, George Gartner.

“Service acknowledged by receipt of copy of 3 proposed instructions of defendant.

“HARRY O. AREND,

“United States Attorney.”

I, Muriel Anderson Lomen, of Fairbanks, Alaska, hereby certify:

That I am the official court reporter in the District Court for the Territory of Alaska, Fourth Division; that I attended the trial of the cause entitled, “United States of America, Plaintiff, vs. George Gartner, an Insane Person, and Mike Erceg, Guardian of the Estate of George Gartner, an insane person, Defendants, No. 5368,” at Fairbanks, Alaska, on November 20, 1946, and took down in

shorthand the testimony given and proceedings had thereat; that I thereafter transcribed said shorthand, and the foregoing pages, numbered 1 to 67, inclusive, comprise a full, true, and correct statement and transcript of such testimony and proceedings.

Dated at Fairbanks, Alaska, this 31st day of December, 1946.

MURIEL ANDERSON LOMEN,
Court Reporter.

[Endorsed]: Filed Dec. 31, 1946. [95]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To The United States of America, Plaintiff above named, and to Harry O. Arend, United States Attorney, its Attorney:

Notice is hereby given that the above named Defendants, and each of them, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, from the final judgment, made and entered in this action in the above entitled Court, on the 6th day of December, 1946, in favor of the Plaintiff, and against the said Defendants, George Gartner, an insane person, and Mike Erceg, Guardian of the Estate of George Gartner, an insane person, wherein it was ordered and adjudged that the Plaintiff have and recover from the Defendant George Gartner and from the Defendant Mike Erceg, as Guardian of

the Estate of George Gartner, an insane person, the sum of nine thousand one hundred eighty dollars and eleven cents (\$9,180.11), with interest thereon at the rate of six per centum (6%) per annum from the date of said judgment until paid, together with the costs and disbursements of said action. Defendants also appeal from the order of said Court denying their Motion for New Trial of said action.

JOHN L. MCGINN,
 COLLINS & CLASBY,
 By /s/ CHAS. J. CLASBY,
 Attorneys for Defendants.

Service of the foregoing Notice of Appeal by receipt of a copy thereof, is hereby acknowledged this 20th day of February, 1947.

/s/ HARRY O. AREND,
 United States Attorney.

[Endorsed]: Filed Feb. 20, 1947.

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL

The above-named defendants, George Gartner, an insane person, and Mike Erceg, guardian of the estate of George Gartner, an insane person, and each of them, considering themselves agreed by the judgment of this Court made and entered in the above-entitled action on the 6th day of December, 1946, in favor of the above-named plaintiff, and against the said defendants, wherein it was ordered

and adjudged that the plaintiff have and recover from the defendant George Gartner and from the defendant, Mike Erceg, as guardian of the estate of George Gartner, an insane person, the sum of Nine Thousand One Hundred Eighty Dollars and Eleven Cents (\$9,180.11), with interest at the rate of six per centum (6%) per annum from the date of said judgment until paid, together with plaintiff's costs and disbursements of said action, do hereby appeal from said judgment and the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified and set forth in the Assignment of Errors, which is filed herewith, and the said defendants pray that this Appeal be allowed and that a transcript of the record, proceedings and papers upon which the said Judgment was made, duly authenticated by the Clerk of this Court may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California. [97]

Dated at Fairbanks, Alaska, this 20th day of February, 1947.

JOHN L. MCGINN,
COLLINS & CLASBY,
By /s/ CHAS. J. CLASBY,

Attorneys for Defendants.

Service of the foregoing Petition for Allowance of Appeal, by receipt of a copy thereof, is hereby acknowledged this 20th day of February, 1947.

/s/ HARRY O. AREND,

United States Attorney.

[Endorsed]: Filed Feb. 20, 1947. [98]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now the above-named defendants and allege that the Judgment of the above-entitled Court, entered in the above-entitled cause on the 6th day of December, 1946, is erroneous, unjust to them, and file with their Petition for an Allowance of Appeal the following assignments of error upon which they will rely:

I.

The Court erred in overruling the Demurrer of the Defendants to the complaint of Plaintiff upon the grounds that the Court had no jurisdiction of the subject of the action, and that the Complaint does not state facts sufficient to constitute a cause of action.

II.

The Court erred in sustaining Plaintiff's Demurrer to Defendants' First and Second Affirmative Defenses stated in their Amended Answer upon the grounds that said defenses failed to state sufficient facts to constitute a defense.

III.

The Court erred in permitting John LeRoy Haskins, a witness called on behalf of Plaintiff, to testify over the objections of Defendants, as follows:

“Q. How long have you known of Morning-side Hospital by actually being there or by repute? [99]

A. I know about it a year and a half or two years before I went there.

Q. How has it ranked with other institutions of a similar type throughout the country?

Mr. Clasby: To which we object, if the Court please. It has no bearing on the issues in this case.

The Court: Objection overruled.

Q. Just answer the questions.

A. Well, we believe that our discharge ratio of admissions—that is, the number of patients discharged as compared with the number of patients admitted ranks as well up with any other hospitals, and our death rates are quite low.”

IV.

The Court erred in permitting John LeRoy Haskins, a witness called on behalf of the Plaintiff, to testify over the objections of Defendants, as follows:

“Q. How does the care and maintenance furnished at Morningside compare with other mental hospitals?

Mr. Clasby: We address the same objection to that question.

The Court: Objection overruled.

Q. You may answer the question.

A. We believe that our—we know; that our food—the patients—the food the patients have there is better than the average mental hospital. We very often have attendants or nurses tell us that the food that the patient gets there is better than the staff food

in most hospitals. We believe that the care is—our number of attendants to the patients is much higher than the average for the United States; that is, we have more attendants. You rate your number of attendants, having so many patients to each attendant. For instance, you would say we had three hundred patients and you had fifty attendants, you would have one attendant for six patients. We usually run one to five. We find many in the States run one to sixteen, one to eighteen, one to twenty. The proportion of attendants is higher, which [100] we believe gives better care.”

V.

The Court erred in permitting John LeRoy Haskins, a witness called on behalf of Plaintiff, to testify over the objection of Defendants, as follows:

“Q. Are you acquainted with George Gartner? A. Yes.

Q. How long have you known him?

A. I have known George since July, 1936.

Q. Now, Dr. Haskins, I would like to have you state to the jury what, in your opinion, was the reasonable value of the care and maintenance provided Mr. George Gartner at Morningside Hospital, on a monthly basis, per month during 1927?

Mr. Clasby: To which we object, if the Court please, for several reasons. The first, this witness was not present at the hospital in 1927 and has no personal knowledge of the

services that were then performed for George Gartner. This witness was not then a member of the staff of the Sanitarium Company and has no knowledge of what it cost the Sanitarium Company to supply those services or what the reasonable value of those services were. This witness has further testified that at that time he was in New York—or, no—he was in the general practice of medicine. He was not even connected with psychiatry or had any knowledge of hospitals for insane patients.

The Court: Objection overruled.

A. About \$52.00 a month.”

VI.

The Court erred in permitting John LeRoy Haskins, a witness called on behalf of Plaintiff, to testify over the objection of Defendants, as follows:

“Q. Will you give us your answer to the same question for the year 1928?”

Mr. Clasby: Just a moment. To which we interpose the same objection, if the Court please. The witness' testimony shows in 1928 he was in private [101] practice; he had no familiarity with this institution or this patient or costs at psychiatric institutions. It hasn't been shown that he has any records or information available to him from which to form an opinion as to the cost in 1928, the same as our objection to the year 1927. There is other and better evidence that can be produced to

establish that cost, and that is the record of the sanitarium itself.

The Court: Objection overruled.

A. \$52.00 a month.”

VII.

The Court erred in permitting John LeRoy Has-kins, a witness called on behalf of Plaintiff, to testify over the objections of Defendants as follows:

“Q. And will you answer the question with reference to the year 1929?

A. \$52.00 a month.

Mr. Clasby: We, if the Court please, would like to have the record show an objection to all questions of this kind up to the year 1936.

The Court: Very well. The same ruling to the objections.

Q. For 1930?

A. 1930. At that time food prices were somewhat lower.

Mr. Clasby: We object to comments by the witness.

Mr. Arend: Yes. You can just state——

A. (Interposing) \$47.00.

Q. 1931? A. \$47.00.

Q. 1932? A. \$47.00.

Q. 1933? A. \$47.00.

Q. 1934? A. \$47.00.

Q. 1935? A. \$47.00.

Q. 1936? A. \$50.00.”

VIII.

The Court erred in refusing to strike the testimony of Plaintiff's witness John LeRoy Haskins as to the reasonable value of Plaintiff's services [102] to the Defendant George Gartner for the reason that said testimony was based entirely upon the contract price between the Plaintiff and the Sanitarium Company, the proceeding in relation thereto being as follows:

“Q. On what do you base that?

A. Well, I base it on reports which we have from the United States Public Health Service and the physician who was on duty at the institution at that time.

Q. What did he base it on?

A. He based it on what he believed to be adequate care of the patient. They were getting adequate care, and an investigation had shown that that was about equivalent with the care in other hospitals of the same type.

Q. You, at that time, had no knowledge of the care that was given to George Gartner?

A. I am going on his notes, his clinic records, and his observations which are in the hospital now, and his reports to the department covering those periods.

Q. Well, aren't you largely going on the contract price?

A. If the contract price was a fair—If the contract price was a fair price, and it was, that was the adequate care.

Q. If I recall your testimony properly,

Doctor, your testimony coincides exactly with the contract price? A. Well——

Q. Isn't that correct?

A. Yes, we believe that——

Q. (Interposing): Now, wait a minute. And that your testimony as to when the reasonable value of the services rendered George Gartner varied, why the contract varied too? [103]

A. Yes.

Q. Now I ask you, isn't your testimony based entirely upon the contract price?

A. What else would it be based on?

Mr. Clasby: Well, on that basis, if the Court please, we move that this testimony be stricken for the reason that he has admitted it is based on the contract price."

IX.

The Court erred in admitting, over objection by the Defendants, the contract price for per capita care of patients at Morningside Hospital during the years 1927 to 1942; agreed upon between the Plaintiff and the Santarium Company, the proceedings relating thereto being as follows:

"Mr. Arend: If the Court please, at this time we ask permission to read the stipulation to the jury.

The Court: Very well.

Mr. Clasby: We object to the stipulation being admitted in evidence upon the grounds and for the reason that the contract price as therein stipulated is not proper evidence to be

submitted in a proceeding of this kind and has no tendency to prove any of the issues.

The Court: Objection overruled. You may mark that as an exhibit, Mr. Clerk.

(Whereupon “Agreed Statement of Facts and Stipulation” was marked as Plaintiff’s Exhibit A by the Clerk of the Court. Said stipulation was read by Mr. Berrett and is in words and figures as follows:) [104]

“In the District Court for the Territory of
Alaska, Fourth Judicial Division

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE GARTNER, an Insane Person, and
MIKE ERCEG, Guardian of the Estate of
George Gartner, an Insane Person,
Defendants.

No. 5368

AGREED STATEMENT OF FACTS AND
STIPULATION

The above-named plaintiff and the defendants, acting by and through their respective undersigned attorneys, hereby stipulate and agree that, if witnesses were called and examined on the question of expenditures made by the plaintiff for the care and maintenance of the said defendant, George Gartner, an insane

person, at Morningside Hospital, at Portland, Oregon, the following facts would be established by the testimony, to-wit:

I.

That under the provisions of the Act of Congress of February 6, 1909, 35 Stat. 601, 48 U.S.C. 46, and prior to the admission of the said George Gartner to the said hospital on August 10, 1927, there was in effect between the Department of Interior of the United States of America and the Sanitarium Company, an Oregon corporation, which company during all of the times hereinafter mentioned operated said Morningside Hospital, a contract dated December 14, 1923, and bearing the number No. 1 Sec-1/2, providing for the care, custody, medical treatment and maintenance, during a period of five years from and including January 16, 1925, at a rate of \$52 per patient, per month, of such residents of Alaska as legally were adjudged insane and committed to the said hospital, and that the Department of the Interior and the said company entered into other similar contracts, bearing the dates and numbers and for the periods and at the rates per patient, per month, as follows: April 3, 1929 (No. 1 Sec-35), five years from and including January 16, 1930, at \$47; May 22, 1934, [105] (No. I Sec. 143), one year from and including January 16, 1935, at \$47; June 8, 1935, (No. I Sec-168), one year from and including January

16, 1936, at \$50; July 17, 1936, (No. I Sec-188), one year from and including January 16, 1937, at \$50; June 5, 1937, (No. I Sec-207) for the period beginning January 16, 1938, and ending June 30, 1943—unless sooner terminated, as therein provided—at \$54.

II.

That between the 10th day of August, 1927, and the 13th day of October, 1942, both dates inclusive, the said George Gartner, an insane person, was kept and maintained continuously in said hospital under said contracts; and that during said period last mentioned the plaintiff expended from the public funds and paid to said Morningside Hospital, under the said contracts, the total sum of Nine Thousand One Hundred Eighty and 11/100 Dollars (\$9,180.11) for the care and maintenance of the said George Gartner at said hospital, and payments being itemized as follows:

8/10/27 to 1/15/30 @ \$52.00 per month	\$1,518.90
1/16/30 to 1/15/35 @ \$47.00 per month	2,820.76
1/16/35 to 1/15/36 @ \$47.00 per month	563.24
1/16/36 to 1/15/37 @ \$50.00 per month	600.81
1/16/38 to 10/13/42 @ \$54.00 per month	3,075.27

III.

It is specially agreed by the parties to this action that nothing in this stipulation contained shall be taken as establishing the reasonable cost of the care and maintenance of the said George Gartner at said hospital during the

period stated or as establishing the fact that the defendant, George Gartner, is indebted to the plaintiff in the said sum of \$9,180.11, or any other sum; and both parties reserve the right to produce at the trial of this cause whatever testimony they, or either of them, may see fit concerning such reasonable cost and/or indebtedness as aforesaid.

Dated at Fairbanks, Alaska, this 10th day of September, 1946.

/s/ HARRY O. AREND,

United States Attorney.

JOHN MCGINN,

COLLINS & CLASBY,

By CHAS. J. CLASBY,

All Attorneys for the
Defendants.”

X.

The Court erred in refusing to grant defendants motion for the entry of a non-suit, the proceeding relating thereto being as follows:

“Mr. Clasby: At this time, if the Court please, we would like to move the entry of a non-suit upon the grounds and for the reason that the government has failed to establish the right to recover under the common law in that their evidence does not show that there have been any profits from the property belonging to the estate of George Gartner, an insane person, against which the charges of his care and maintenance can be assessed.

The Court: "The motion will be denied."

XI.

The Court erred in refusing to permit the Defendant, Mike Erceg, to testify as to the capacity of George Gartner to perform services for Plaintiff and his performance of services for Plaintiff in mitigation of the claim of Plaintiff, the proceedings relating thereto being as follows:

"Mr. Clasby: We offer to prove by this witness—and for that purpose I will condense the testimony—that he visited the sanitarium on two different occasions, once in 1932 and once in 1939; that on each of those occasions he observed George Gartner working; that on each of those occasions he talked with George Gartner; that on each of those occasions he inquired of George Gartner what he had been doing and that on the first of those occasions he was told by George Gartner that he had been working on the farm; that on the second of those occasions, in 1939, he was told by George Gartner that he was working in the kitchen; that on each of those occasions he told Mike Erceg that he was working from four to six hours a day and that he was receiving no pay for that work. The witness will further testify that on each of those [107] occasions, that is to say, 1932 and 1939, he observed the physical condition of George Gartner and that George Gartner was healthy and was apparently capable of performing physical labor.

The Court: That is the offer?

Mr. Clasby: That is the offer.

Mr. Arend: Well, your Honor, we object to conversations with an insane person. There is no showing either that——

The Court (Interposing): Now, what is your objection to his offer?

Mr. Arend: We object to all of the testimony that has been offered.

The Court: On what grounds?

Mr. Arend: On the ground that it is irrelevant, immaterial and also incompetent.

The Court: Objection sustained.

Mr. Clasby: For the purpose of the record, counsel for the Defendants would like to state that the offer of proof is made for the purpose of demonstrating that George Gartner had ability to and did perform services for the asylum that are in mitigation of the reasonable value of services rendered by the government to George Gartner, and that was the purpose of the testimony offered.”

XII.

The Court erred in refusing to permit the Defendant, Mike Erceg, as guardian of the Estate of George Gartner, an insane person, to testify as to the property of said George Gartner and the lack of profits therefrom, the proceedings relating thereto being as follows:

“Q. Mr. Erceg, would you tell us what property George Gartner had when you assumed control of his estate?

Mr. Arend: If the Court please, we object to this testimony as irrelevant and immaterial. Whether or not he had property is not relevant and material to the issues in this case.

The Court: Objection sustained.

Q. Does George Gartner's estate now have any assets that represents income from the property that you have administered in this estate? [108] A. No.

Mr. Arend: We object to that question on the same grounds as the preceding question.

The Court: Objection sustained.

Mr. Clasby: And in that connection, if the Court please, we would like again to make an offer of proof.

(The following offer of proof was made out of the presence of the jury:)

Mr. Clasby: We offer to prove by this witness, if he were permitted to testify, that the only assets belonging to the estate of George Gartner, an insane person, at the time he was committed to the Sanitarium were three unpatented mining claims, situate on Coldstream, with a small cabin thereon, and that the said George Gartner had no personal property. We further offer to prove that said George Gartner was at that time heavily indebted and that this witness paid out of his own personal funds all of the indebtedness of George Gartner, so as to prevent said mining claims from being sold; that this witness, out of his personal funds, advanced the money necessary to do the annual

labor work on said mining claims and to preserve said estate, and that said properties were, during that time and for some years after his appointment as guardian, being encroached upon by the United States Smelting and Refining and Mining Company, through their dumping of debris upon said lands, and that said lands were in no condition to be mortgaged (? leased) for the production of revenue or to be mined for the production of profit. We further would prove by this witness, if he were permitted to answer, that an action was filed against said mining company which resulted in a judgment of this court against said mining company in the value of the mining claims, it having been determined that the cost of removing the overburden was greater than the value of the mining claims, it having been determined that the cost of removing the overburden was greater than the value of the mining claims. We further offer to prove by this witness that at that time this witness had advanced over \$10,000.00 from his personal funds for the preservation of the estate. We further offer to prove by this witness, if he were permitted to answer, that when all the expenses were paid, following the litigation, there remains in the bank a balance [109] of approximately \$9,000.00, and that of the sum of \$9,000.00 there now remains in the hands of this guardian approximately \$7,000.00, representing the value of the land alone and not income therefrom. We fur-

ther offer to prove by this witness that the mining claims are now valueless so far as the possibility of conducting mining operations thereon, and that said claims cannot be mortgaged (? leased) for the production of revenue by reason of overburden existing thereon. We offer to prove by this witness that there has been no profits over and above the necessary expenses of preserving the property of this estate during the time that it has been administered by the guardian.

Mr. Arend: We object to all of the testimony as irrelevant and immaterial under the issues of this case.

The Court: Objection sustained.

Mr. Clasby: I have no other questions.

Mr. Arend: No cross examination.

(Witness excused.)”

XIII.

The Court erred in refusing to permit testimony on the part of Defendants by the witness Clegg to establish that Plaintiff had never before in the history of Alaska claimed recompense from the estates of insane persons for care prior to 1942, the proceedings relating thereto being as follows:

“Q. And in your experience do you know personally, or have you ever heard of any law suit or claim having been made by the federal government for recompense from the estate of insane persons of the cost of the care and main-

tenance of those persons in Morningside prior to the year 1942?

Mr. Arend: If the Court please, we object to the question as irrelevant, incompetent, immaterial and not in issue in this case.

The Court: Objection sustained."

XIV.

The Court erred in refusing the offer of Defendants to establish by testimony that prior to 1942 Plaintiff cared for the insane as a gratuity given without intent of recoupment, the proceedings relating thereto being as follows: [110]

"Mr. Clasby: There is one other phase I would like to make by an offer of proof rather than by direct question, because I don't want to present it before the jury.

(The following offer was made out of the presence of the jury:)

Mr. Clasby: In addition to the answer "no" to the question that has been asked, we offer to prove by this witness, if he were permitted to answer, that it was the general understanding among the bench and the bar of Alaska, from the year 1900 to 1942, insofar as this witness is acquainted with it, that the payments made by the government for the care and maintenance of insane persons were made as a gratuity and without any policy or expectation of recovering or recouping those expenses.

Mr. Arend: We object to the question as in-

competent, irrelevant, and immaterial and not binding upon the government.

The Court: Objection sustained.”

XV.

The Court erred in directing a verdict for the Plaintiff, and in receiving and filing such verdict as being contrary to the law and the evidence, the proceedings relating thereto being as follows:

“The Court: Well, you are not making a motion for a directed verdict?

Mr. Arend: Well, your Honor, we move the Court for a directed verdict in this case, directing the jury to bring in a verdict in line with the values established by the government’s witness, Dr. Haskins, on the grounds that it was the only evidence of value introduced in this case, evidence of the reasonable value of the care and maintenance of George Gartner at Morningside Hospital from August 10, 1927, to October 13, 1942, both dates inclusive.

Mr. Clasby: May it please the Court, when someone is looking at you with a shotgun, there isn’t a great deal you can say. It appears to us, however, that there is what might, in some legal circles, be called a scintilla of evidence that could be seized upon as a reason for carrying the case to the jury, and that is the doctor’s statement that so far as George Gartner’s care was concerned, if all patients were like him, it might have been possible that [111] the cost would have been a little less. Our bewildered-

ment at being sued some twenty years later can be understood and our inability to disprove the government's figures, going so far back in history, can likewise be readily understood. We have offered what we think is a question for the jury, and that is that this man was not a patient that required a great deal of care and attention and that he could perform services, and the evidence shows that the price testified to is a per capita average cost, and we believe this jury is entitled to, under the evidence and the law, have submitted to them the question of whether or not that price is what the value of these particular services rendered to George Gartner was; and on that theory we resist counsel's motion for a directed verdict.

The Court: The motion is granted. Ladies and gentlemen of the jury, you are instructed that the evidence in this case, under the law governing it, shows that the Plaintiff is entitled to a judgment as prayed for in the complaint. You are therefore, instructed to bring in a verdict in favor of the Plaintiff in the sum of \$9,180.00. I will appoint Mr. Green foreman of the jury to sign the verdict.

(Thereupon the jury rendered its verdict according to the instructions of the court.)

The Court: The verdict may be read.

(The verdict was read by the clerk of the court.)

The Court: The verdict may be filed. The jury is excused.

Mr. Clasby: Could the record show an exception on behalf of the Defendants to the granting of said motion?

The Court: Very well."

XVI.

The Court erred in making and entering Judgment for the Plaintiff and against Defendants in the sum of \$9,180.11 with interest thereon at the rate of 6% per annum, the same being contrary to the law and the evidence in the respects in these Assignments of Error detailed.

Wherefore, Defendants pray that the said Judgment be reversed and [112] the cause remanded for a new trial, in accordance with the law.

JOHN L. MCGINN,
COLLINS & CLASBY,
By /s/ CHAS. J. CLASBY,
Attorneys for Defendants.

Service of the foregoing Assignments of Error, by receipt of a copy thereof, is hereby acknowledged at Fairbanks, Alaska, this 20th day of February, 1947.

/s/ HARRY O. AREND,
United States Attorney.

[Endorsed]: Filed Feb. 20, 1947. [113]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL AND FIXING
AMOUNT OF COST BOND

Now, on this 20th day of February, 1947, the same being one of the days of the General March 1946 Term of this Court, this cause came on regularly to be heard upon the Petition of the Defendants above named and each of them, for the allowance of an appeal in behalf of said Defendants from the final Judgment entered in this cause on the 6th day of December, 1946, and for the fixing of the amount of the Cost Bond on said appeal and the Court being duly advised in the premises does hereby find that the amount involved in said action is in excess of One Thousand Dollars (\$1,000.00), and that the Cost Bond herein should be fixed at the sum of Two Hundred Fifty Dollars (\$250.00).

Now Therefore, It Is Ordered That the Appeal of said Defendants from the final judgment entered herein on the 6th day of December, 1946, be and is hereby allowed to the United States Circuit Court of Appeals for the Ninth Circuit, and that a certified copy of the transcript of record, proceedings, orders, judgment, testimony, and all other proceedings in said matter on which said Judgment appealed from is based, be transferred, duly authenticated, to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

It is further ordered that the amount of the Cost Bond herein be, and the same is hereby fixed at the

sum of Two Hundred Fifty Dollars [114] (\$250.00).

Dated at Fairbanks, Alaska, this 20th day of February, 1947.

/s/ HARRY E. PRATT,
District Judge.

Presented By:

/s/ CHAS. J. CLASBY,
One of the Attorneys for
Defendants.

Service hereof by receipt of a copy thereof is acknowledged this 20th day of February, 1947.

/s/ HARRY O. AREND,
United States Attorney.

[Endorsed]: Lodged and filed Feb. 20, 1947.

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men By These Presents:

That, We, Mike Erceg, as Guardian of the Estate of George Gartner, an insane person, as principal and Charles Slater and L. Orsini, as sureties, all of Fairbanks, Alaska, are held and firmly bound unto the United States of America, in the sum of Two Hundred Fifty Dollars (\$250.00), lawful money of the United States of America, to be paid to the said United States of America, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 20th day of February, 1947.

The condition of the above obligation is such that:

Whereas the above bounden Defendants have filed their Petition for appeal and are about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from that certain Judgment in favor of the above named Plaintiff the United States of America, and against the Defendants above named, which Judgment was rendered and entered in the above entitled Court and cause on the 6th day of December, 1946, whereby it was adjudged that said Plaintiff have and recover from the Defendant George Gartner, and from the Defendant Mike Erceg, as Guardian of the Estate of George [116] Gartner, an insane person, the sum of Nine Thousand One Hundred Eighty Dollars and Eleven Cents (\$9,180.11), with interest thereon at the rate of six per centum (6%) per annum from the date of said Judgment until paid, together with Plaintiff's costs and disbursements; and

Whereas said Defendants desire to appeal from said Judgment and the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse said Judgment, and have given Plaintiff in said action, Notice of Appeal as required by law, and said Court having duly fixed the amount of the Cost Bond at Two Hundred Fifty Dollars (\$250.00);

Now Therefore, if the Defendants above named shall prosecute said appeal to effect, and answer all costs that may be adjudged against them if they

shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

/s/ MIKE ERCEG,

Guardian of the Estate of George Gartner, an insane person, Principal.

CHARLES SLATER,

L. ORSINI,

Sureties. [117]

United States of America,
Territory of Alaska—ss.

Charles Slater and L. Orsini being first duly sworn on oath, each for himself, deposes and says:

I am a resident of Fairbanks, in the Fourth Judicial Division, in the Territory of Alaska, that I am not an Attorney, Counsel at Law, Judge, Marshal, Clerk, Commissioner, or other officer of any Court; that I am worth the sum of Five Hundred Dollars (\$500.00), over and above all my just debts and obligations, in property not exempt from execution, situate in the Territory of Alaska.

CHARLES SLATER,

L. ORSINI.

Subscribed and sworn to before me this 20th day of February, 1947.

[Seal] /s/ CHAS. J. CLASBY,

Notary Public in and for the Territory of Alaska.

My commission expires: 4/20/48.

Approved:

/s/ HARRY O. AREND,

United States Attorney.

The foregoing bond is hereby approved this 20th day of Feb., 1947.

/s/ HARRY E. PRATT,
District Judge.

[Endorsed]: Filed Feb. 20, 1947. [118]

[Title of District Court and Cause.]

CITATION OF APPEAL

The President of the United States of America

To: The above named Plaintiff, the United States of America, and to Harry O. Arend, United States Attorney, Plaintiff's Attorney.

You are hereby cited to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco, State of California, within forty (40) days from the date of this Citation, pursuant to an order allowing an appeal, made and entered in the above entitled cause on this day, in which the above named Defendant George Gartner, and the Defendant Mike Erceg, as Guardian of the Estate of George Gartner, an insane person, are Defendants and Appellants, and the United States of America is Plaintiff and Appellee, to show cause, if any there be, why the Judgment made and entered in said cause on the 6th day of December, 1946, in favor of the Plaintiff and against the Defendants and Appellants herein, should not be set aside and reversed, and why speedy justice should not be done to said Defendants and Appellants above named and each of them in that behalf.

Witness The Honorable Fred A. Vinson, Chief

Justice of the Supreme Court of the United States of America, on this 20th day of February, A. D., One Thousand Nine Hundred and Forty-Seven.

Entered in Court Journal Feb. 20, 1947, No. 34, Page 335.

/s/ HARRY E. PRATT,
District Judge. [119]

Service of the foregoing Citation by receipt of a copy thereof, is hereby acknowledged at Fairbanks, Alaska, this 20th day of February, 1947.

/s/ HARRY O. AREND,
United States Attorney, for
Plaintiff.

[Endorsed]: Lodged and filed Feb. 20, 1947.

[Title of District Court and Cause]

STIPULATION RE: PRINTING OF RECORD

It is hereby stipulated by and between the above named parties, Plaintiff and Defendants, through their respective Attorneys, that in printing the papers and records to be used on the hearing on appeal in the above entitled cause, for the consideration of the United States Circuit Court of Appeals for the Ninth Circuit, the title of the Court and Cause in full on all papers shall be omitted, except on the first page of said record and that there shall be inserted in place of said title on all papers used as a part of said records the words "Title of Court and Cause". Also that all endorsements on said

papers used as a part of said record shall be omitted except the Clerk's file marks and the admission of service.

Dated at Fairbanks, Alaska, this 20th day of February, 1947.

JOHN L. McGINN,
COLLINS & CLASBY,

/s/ By CHAS. J. CLASBY,

Attorneys for Defendants
and Appellants.

/s/ HARRY O. AREND,

United States Attorney, for
Plaintiff and Appellee.

[Endorsed]: Filed Feb. 20, 1947. [121]

[Title of District Court and Cause]

PRAECIPE FOR TRANSCRIPT OF RECORD

To: John B. Hall, Clerk of the above entitled Court.

You will please prepare transcript of record in the above entitled cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, sitting in San Francisco, California, upon the appeal heretofore perfected to said Court, and include therein the following papers and records, to-wit:

1. Complaint.
2. Demurrer to Complaint.

3. Order Overruling Demurrer; Journal 33, page 14, October 31, 1945.
4. Opinion on Demurrer.
5. Amended Answer.
6. Demurrer to First and Second Affirmative Defense in Amended Answer.
7. Order Sustaining Demurrer to First and Second Affirmative Defenses of Amended Answer, Journal 33, page 314, March 26, 1946.
8. Second Amended Answer.
9. Verdict.
10. Judgment.
11. Transcript of Testimony and Proceedings.
12. Notice of Appeal.
13. Petition for Appeal.
14. Assignments of Errors.
15. Order Allowing Appeal and Fixing Cost Bond.
16. Cost Bond on Appeal.
17. Citation on Appeal.
18. Stipulation re. Printing of Record.
19. Praecipe.
20. Agreed Statement of Facts and Stipulation.

This transcript is to be prepared as required by law and [122] the rules and orders of this Court and of the Circuit Court of Appeals for the Ninth Circuit, and is to be forwarded to said Court at San Francisco, California, so that it will be docketed therein on or before the 15th day of May, 1947.

Dated at Fairbanks, Alaska, this 6th day of May, 1947.

JOHN L. MCGINN,
COLLINS & CLASBY,
By /s/ CHAS. J. CLASBY,
Attorneys for Appellant.

Copy received this 6th day of May, 1947.

/s/ HARRY O. AREND,
United States Attorney.

[Endorsed]: Filed May 6, 1947. [123]

PLAINTIFF'S EXHIBIT A

In the District Court for the Territory of Alaska,
Fourth Judicial Division

No. 5368

UNITED STATES OF AMERICA, Plaintiff,

vs.

GEORGE GARTNER, an Insane Person, and
MIKE ERCEG, Guardian of the Estate of
George Gartner, an Insane Person,
Defendants.

AGREED STATEMENT OF FACTS
AND STIPULATION

The above named plaintiff and the defendants, acting by and through their respective undersigned attorneys, hereby stipulate and agree that, if wit-

nesses were called and examined on the question of expenditures made by the plaintiff for the care and maintenance of the said defendant, George Gartner, an insane person, at Morningside Hospital, at Portland, Oregon, the following facts would be established by the testimony, to-wit:

I.

That under the provisions of the Act of Congress of February 6, 1909, (35 Stat. 601, 48 U.S.C. 46, and prior to the admission of the said George Gartner to the said hospital on August 10, 1927, there was in effect between the Department of Interior of the United States of America and the Sanitarium Company, an Oregon corporation, which Company during all of the times hereinafter mentioned operated said Morningside Hospital, a contract dated December 14, 1923, and bearing the number No. 1 Sec-1/2, providing for the care, custody, medical treatment and maintenance, during a period of five years from and including January 16, 1925, at a rate of \$52 per patient, per month, of such residents of Alaska as legally were adjudged insane and committed to the said hospital, and that the Department of the Interior and the said company entered into other similar contracts, bearing the dates and numbers and for the periods and at the rates per patient, per month, as follows: April 3, 1929 (No. 1 Sec-35), five years from and including January 16, 1930, at \$47; [124] May 22, 1934 (No. 1 Sec-143), one year from and including January 16, 1935, at \$47; June 8, 1935 (No. 1 Sec-168), one year from and includ-

ing January 16, 1936, at \$50; July 17, 1936 (No. 1 Sec-188), one year from and including January 16, 1937, at \$50; June 5, 1937 (No. 1 Sec-207), for the period beginning January 16, 1938, and ending June 30, 1943—unless sooner terminated, as therein provided—at \$54.

II.

That between the 10th day of August, 1927, and the 13th day of October, 1942, both dates inclusive, the said George Gartner, an insane person, was kept and maintained continuously in said hospital under said contracts; and that during said period last mentioned the plaintiff expended from the public funds and paid to said Morningside Hospital, under the said contracts, the total sum of Nine Thousand One Hundred Eighty and 11/100 Dollars (\$9,180.11) for the care and maintenance of the said George Gartner at said hospital, said payments being itemized as follows:

8/10/27 to	1/15/30 @ \$52.00 per month..	\$1,518.90
1/16/30 to	1/15/35 @ \$47.00 per month..	2,820.76
1/16/35 to	1/15/36 @ \$47.00 per month....	563.24
1/16/36 to	1/15/37 @ \$50.00 per month..	600.81
1/16/37 to	1/15/38 @ \$50.00 per month..	601.13
1/16/38 to	10/13/42 @ \$54.00 per month..	3,075.27

III.

It is specially agreed by the parties to this action that nothing in this stipulation contained shall be taken as establishing the reasonable cost of the care and maintenance of the said George Gartner at said

hospital during the period stated or as establishing the fact that the defendant, George Gartner, is indebted to the plaintiff in the said sum of \$9,180.11, or any other sum; and both parties reserve the right to produce at the trial of this cause whatever testimony they, or either of them, may see fit concerning such reasonable cost and/or indebtedness as aforesaid.

Dated at Fairbanks, Alaska, this 10th day of September, 1946.

/s/ HARRY O. AREND,
United States Attorney.
JOHN McGINN,
COLLINS & CLASBY,
By CHAS. J. CLASBY,
All Attorneys for the
Defendants.

[Endorsed]: Filed Sept. 12, 1946. [125]

[Title of District Court and Cause]

CERTIFICATE OF CLERK OF THE DISTRICT COURT TO TRANSCRIPT OF RECORD.

I, John B. Hall, Clerk of the District Court for the Territory of Alaska, Fourth Judicial Division, do hereby certify that the foregoing, consisting of 125 pages, constitutes a full, true, and correct transcript of the record on appeal in Cause No. 5368, entitled: United States of America, Plaintiff, versus George Gartner, an Insane Person, and Mike Erceg, Guardian of the Estate of George Gartner, an Insane Person, Defendants, and was made pursuant

to and in accordance with the Praeceptum of the defendant and appellant, filed in this action, and by virtue of the said Appeal and Citation issued in said cause, and is the return thereof in accordance therewith, and

I do further certify that the Index thereof, consisting of page "a", is a correct index of said Transcript of Record, and that the list of attorneys, as shown on page "b", is a correct list of the attorneys of record; also that the cost of preparing said transcript and this certificate, amounting to \$7.70, has been paid to me by counsel for appellant in this action.

In Witness Whereof, I have hereunto set my hand and affixed the seal of this Court this 7th day of May, 1947.

[Seal] /s/ JOHN B. HALL,

Clerk, District Court, Territory of Alaska, 4th Division.

[Endorsed]: No. 11623. United States Circuit Court of Appeals for the Ninth Circuit. George Gartner, an Insane Person, and Mike Erceg, Guardian of the Estate of George Gartner, an Insane Person, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Alaska, Fourth Division.

Filed May 10, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals,
for the Ninth Circuit

No. 11623

GEORGE GARTNER, an Insane Person, and
MIKE ERCEG, Guardian of the Estate of
George Gartner, an Insane Person,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

STATEMENT OF POINTS AND DESIGNA-
TION OF PARTS OF RECORD ON AP-
PEAL.

Appellants pursuant to subdivision 6 of Rule 19 of the Rules of this Court, file a statement of the points on which they intend to rely on this appeal and designate the parts of the record which they think necessary for the consideration thereof, as follows:

Appellants state that the points on which they intend to rely on this appeal are all those included in appellants' Assignment of Errors filed in this cause, and they hereby adopt said Assignment of Errors as such points and hereby designate the entire record as necessary for the consideration thereof, and that the transcript of the record be printed in its entirety as certified.

COLLINS & CLASBY,
/s/ JOHN L. McGINN,
Attorneys for Appellants.

[Endorsed]: Filed May 28, 1947.

